

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20251023**

**Docket: A-276-24**

**Citation: 2025 FCA 191**

**CORAM: RENNIE J.A.  
GLEASON J.A.  
LOCKE J.A.**

**BETWEEN:**

**LAWRENCE GOULD**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Calgary, Alberta, on October 22, 2025.

Judgment delivered at Ottawa, Ontario, on October 23, 2025.

**REASONS FOR JUDGMENT BY:**

**LOCKE J.A.**

**CONCURRED IN BY:**

**RENNIE J.A.  
GLEASON J.A.**

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**REASONS FOR JUDGMENT**

**LOCKE J.A.**

[1] Some of the facts related to this appeal are complicated and contentious. However, the appeal can be dismissed without a detailed discussion of all of them because they are not relevant.

[2] In a decision of the Social Security Tribunal, General Division (General Division), Lawrence Gould was denied employment insurance (EI) benefits on the basis that he had lost his

job for misconduct, as contemplated in subsection 30(1) of the *Employment Insurance Act*, S.C. 1996, c. 23. The Social Security Tribunal, Appeal Division (Appeal Division), denied Mr. Gould leave to appeal the General Division's decision. Mr. Gould sought judicial review of the Appeal Division's decision before the Federal Court, but his application was dismissed (2024 FC 877). Mr. Gould now appeals the Federal Court's decision to this Court.

[3] The relevant background facts are as follows. The misconduct that Mr. Gould was found to have committed was his refusal to submit to a drug test at the request of his employer as contemplated in his employer's drug policy. Paragraph 15(h) of that policy provided that an employee's refusal to submit to a drug test was considered a violation of the policy and cause for immediate termination. Mr. Gould does not dispute that the employer requested that he take a drug test and that he refused the request. He also does not dispute the content of the drug policy. Rather, he argues that his refusal to take a drug test should not have resulted in his dismissal because the request did not comply with the drug policy in certain respects, and therefore he was justified in refusing the drug test.

[4] The General Division noted that the concept of misconduct does not require that the employee do anything wrong. Instead, it focuses on whether the employee's conduct was wilful, that is, conscious, deliberate or intentional. As noted at paragraph 27 of the General Division's decision, "[t]here is misconduct if the Appellant knew or should have known that his conduct could get in the way of carrying out his duties toward his employer and that there was a real possibility of being let go because of that." Based on this definition, the General Division was satisfied that Mr. Gould's dismissal was for misconduct.

[5] The Appeal Division denied Mr. Gould leave to appeal on the basis that he had no reasonable chance of success in establishing a reviewable error by the General Division. For its part, the Federal Court found no reviewable error in the Appeal Division's decision. Importantly, the Federal Court cited this Court's decision in *Sullivan v. Canada (Attorney General)*, 2024 FCA 7, [2024] F.C.J. No. 31 (*Sullivan*), which confirmed this Court's jurisprudence to the effect that the test for misconduct focuses on the employee's knowledge and actions and not on the employer's behaviour. This Court stated as follows in *Sullivan* at paragraph 6:

We would add that the court jurisprudence makes sense. Were the applicant's submissions to be upheld, the Social Security Tribunal would become a forum to question employer policies and the validity of employment dismissals. Under any plausible reading of the legislation that governs the Tribunal, it is a forum to determine entitlement to social security benefits, not a forum to adjudicate allegations of wrongful dismissal.

[6] Mr. Gould attempts to distinguish *Sullivan* on the basis that he does not take issue with the drug policy itself, but with the manner of its application. However, this difference cannot assist Mr. Gould because this Court's jurisprudence (including *Sullivan*) applies to both scenarios.

[7] Mr. Gould further attempts to distinguish *Sullivan* on the basis that, in his case, there is no practical avenue to address his allegations of wrongful dismissal because he immediately found another employer after his dismissal, and therefore he suffered no damages. He sought EI benefits after the new employment came to an end. Again, this difference cannot assist Mr. Gould because the availability of damages for wrongful dismissal is irrelevant to entitlement to EI benefits.

[8] Mr. Gould also takes issue with the validity of this Court's jurisprudence on the issue of misconduct. However, he has not convinced me that that jurisprudence is "manifestly wrong" in the sense contemplated in *Miller v. Canada (Attorney General)*, 2002 FCA 370, [2002] F.C.J. No. 1375 at para. 10, which would be necessary for us to overrule it.

[9] This Court's task in this appeal is to assess whether the Federal Court selected the correct standard of review of the Appeal Division's decision, and whether it properly applied that standard of review: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 45. In my view, the Federal Court was correct in selecting reasonableness as the applicable standard of review of the Appeal Division's decision. Further, I find that the Federal Court properly found that the Appeal Division's decision was reasonable.

[10] For these reasons, I would dismiss the appeal. The respondent does not seek costs and I would award none.

"George R. Locke"

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J.A.

"I agree.

Donald J. Rennie J.A."

"I agree.

Mary J.L. Gleason J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-276-24

**STYLE OF CAUSE:** LAWRENCE GOULD v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** OCTOBER 22, 2025

**REASONS FOR JUDGMENT BY:** LOCKE J.A.

**CONCURRED IN BY:** RENNIE J.A.  
GLEASON J.A.

**DATED:** OCTOBER 23, 2025

**APPEARANCES:**

Lawrence Gould FOR THE APPELLANT  
ON HIS OWN BEHALF

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