



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. Y. v. Canada Employment Insurance Commission*, 2018 SST 990

Tribunal File Number: AD-18-145

BETWEEN:

S. Y.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: October 15, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, S. Y. (Claimant), made an initial claim for Employment Insurance benefits on June 23, 2014. The Claimant's employer issued a Record of Employment (ROE) indicating that the Claimant had worked from May 8, 2011, until May 26, 2014, and that her employment had ended due to a shortage of work or end of season/contract. The employer's business had been sold to a new owner.

[3] In the context of another investigation, the Respondent, the Canada Employment Insurance Commission (Commission), contacted the new owner of the business. The Commission was told that the Claimant had quit her job in June 2014, saying that she was no longer able to work because of health reasons. The new owner later issued a new ROE indicating that the Claimant had worked from May 27, 2014, until June 22, 2014, and had quit.

[4] The Commission advised the Claimant by letter that her claim had been re-examined, that it was unable to pay her Employment Insurance regular benefits because she voluntarily left her job with the new owner without just cause, and that voluntarily leaving her job was not her only reasonable alternative. The Claimant requested a reconsideration of this decision. The Commission maintained its initial decision. The Claimant appealed to the General Division.

[5] The General Division concluded that the Claimant had reasonable alternatives available to her prior to leaving her employment, having regard to all of the circumstances. The General Division found that the Claimant did not have just cause for voluntarily leaving her employment under ss. 29 and 30 of the *Employment Insurance Act* (EI Act).

[6] The Claimant was granted leave to appeal to the Appeal Division. The Claimant submits that the General Division did not accept crucial evidence at the hearing although it was made aware of its availability.

[7] The Tribunal must decide whether the General Division failed to observe a principle of natural justice and, if so, whether the General Division's failure to accept the Claimant's evidence changes the outcome of its decision.

[8] The Tribunal dismisses the appeal.

ISSUES

Issue 1: Did the General Division fail to observe a principle of natural justice?

Issue 2: Does the General Division's failure to accept the Claimant's evidence change the outcome of its decision?

ANALYSIS

Appeal Division's Mandate

[9] The Federal Court of Appeal has determined that when the Appeal Division hears appeals under s. 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by ss. 55 to 69 of that Act.¹

[10] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division. It does not exercise a superintending power similar to that exercised by a higher court.²

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Appeal Division must dismiss the appeal.

¹ *Canada (A.G.) v. Jean*, 2015 FCA 242; *Maunder v. Canada (A.G.)*, 2015 FCA 274

² *Idem*.

Issue 1: Did the General Division fail to observe a principle of natural justice?

[12] The Claimant submits that she brought a recording to the hearing to be used as evidence of her dismissal by her new employer. She made it known at the General Division hearing that she had this recording, but she was never asked to provide it as evidence. The Claimant puts forward that the recording is of a phone call between the new employer and the Claimant where her employer says that she was no longer needed for the job.

[13] The Tribunal listened to the audio recording of the General Division hearing and it revealed that the Claimant did inform the General Division that she had a recording of a phone call between her and the new owner regarding the end of her employment.

[14] It is clear to the Tribunal that the Claimant did not have the opportunity to present the evidence and arguments she wished to submit to the General Division.

[15] The Tribunal concludes that the General Division failed to respect a principle of natural justice.

Issue 2: Does the General Division's failure to accept the Claimant's evidence change the outcome of its decision?

[16] The Tribunal finds that the General Division's failure to accept the Claimant's evidence does not change the outcome of its decision.

[17] The Claimant submits that the recording proves that she was dismissed by her new employer. She argues that the recording specifically says that she was no longer needed for the job because the new owner no longer required her services.

[18] Contrary to the Claimant's representations, the official transcript of the phone recording with the employer does not reveal that the new owner dismissed the Claimant because of a lack of work. It simply states that the employer had nothing to gain by not telling the Commission what happened months ago and that it regretted that the Claimant had issues with her Employment Insurance benefits. The employer did not change its version of events.

[19] Therefore, even if the General Division had accepted the Claimant's evidence, it could not have concluded that the Claimant had been dismissed by the new owner because of a lack of work.

[20] Furthermore, as the General Division determined, the evidence before it shows that the Claimant herself confirmed on several occasions that she left her employment voluntarily.

[21] During an interview with the Commission on February 2, 2017, the Claimant stated that she quit her job because she wanted to rest. She mentioned that there was an agreement with the new owner that she would stay one more month so that he could find a replacement and that she would resign then. She wanted a break from work.³

[22] During an interview with the Commission on February 21, 2017, the Claimant stated that she quit her job for medical reasons. She said that she had not been advised by a doctor to quit; she simply gave her notice to the employer and left.⁴

[23] In her request for reconsideration, the Claimant stated that she had agreed with the new owner that she would work for one month to help with the ownership transition, but she was considering taking a break.⁵

[24] During an interview with the Commission held on May 23, 2017, the Claimant stated that she had quit because of fatigue and dizziness. She said that there was an agreement that she would still work for a month and that after that she would leave her job.⁶

[25] The employer confirmed the Claimant's various statements on many occasions, stating that she had voluntarily left her employment to take a break and that it was her personal choice to leave.⁷

³ GD3-21

⁴ GD3-29

⁵ GD3-43

⁶ GD3-50

⁷ GD3-16, GD-3-26, GD3-30, GD3-49

[26] The Tribunal finds that the General Division did not err when it concluded, based on the evidence, that the Claimant voluntarily left her employment and that she was not dismissed due to a shortage of work. Furthermore, at the time the Claimant decided to leave her employment in June 2014, she had other reasonable alternatives.

[27] As the General Division stated, other alternatives were open to the Claimant, because she could have attempted to discuss a possible return with the employer, if it was her intention to only take a short break; discussed changing her schedule to better accommodate her health; or taken a leave of absence to see to her health with the possibility of coming back again. Alternatively, she could have seen a doctor to get a medical note indicating that she had to leave her job.

[28] The Tribunal finds that the General Division did not err when it concluded that because she had reasonable alternatives available to her prior to leaving her employment, having regard to all of the circumstances, the Claimant did not have just cause for voluntarily leaving her employment under to ss. 29 and 30 of the EI Act.

CONCLUSION

[29] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	September 13, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. Y., Appellant S. M., representative of the Appellant Christina Tam, Tribunal-appointed interpreter