



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. D. v. Canada Employment Insurance Commission*, 2018 SST 1021

Tribunal File Number: AD-18-464

BETWEEN:

N. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: October 18, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed, and the matter is returned to the General Division for reconsideration in accordance with the reasons and the directions in this decision.

OVERVIEW

[2] The Appellant, N. D., worked as a “fill in” for X in the summer of 2016. He last worked in August of 2016, returned to university that September, and applied for benefits under the *Employment Insurance Act*.

[3] The Respondent, the Canada Employment Insurance Commission, determined that the Appellant voluntarily left his employment without just cause and denied his request for benefits.

[4] The Appellant appealed the Respondent’s decision to the General Division of the Social Security Tribunal of Canada. The General Division found that the Appellant believed he had been laid off and that X believed that he had quit so he could return to school in the fall. It also found that the Appellant had reasonable alternatives to leaving his employment when he did and, therefore, did not have just cause for voluntarily leaving his employment.

[5] Leave to appeal the General Division decision to the Appeal Division was granted on the grounds that General Division may have made reviewable errors in its decision.

[6] To be expeditious, this appeal is proceeding based on the written record, without an oral hearing.

[7] The appeal is allowed because the General Division failed to decide whether the Appellant left his employment voluntarily or was laid off before addressing the issue of just cause. In this way, the General Division erred in law or failed to exercise its jurisdiction.

ISSUES

[8] Did the General Division err in law or fail to exercise its jurisdiction by failing to decide whether the Appellant left his employment voluntarily?

[9] If the General Division did err in law or fail to exercise its jurisdiction, should the Appeal Division refer the matter back to the General Division for reconsideration, or can the Appeal Division render the decision that the General Division should have rendered?

ANALYSIS

[10] The Appellant submits that the General Division made serious errors in its fact-finding. He submits that the facts do not support a finding that he voluntarily left his employment because the General Division found that he believed that he had been laid off and that he had called the employer twice to ask about work during the school year.

[11] The Respondent agrees and further submits that the matter should be returned to the General Division for reconsideration because the General Division was required to weigh the evidence and justify its conclusions, and it failed to do this by making a decision that was not transparent and intelligible. Specifically, the General Division did not explain how it reconciled contradictory evidence on whether the Appellant voluntarily left his employment or was laid off. Instead, it “jumped to the issue of just cause.”¹

[12] To conduct these proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit, I am rendering a decision on the merits of the appeal based on the written record.²

Issue 1: Did the General Division err in law or fail to exercise its jurisdiction by failing to decide whether the Appellant left his employment voluntarily?

[13] I find that the General Division erred in law and failed to exercise its jurisdiction by failing to decide whether the Appellant left his employment voluntarily.

[14] The Appeal Division does not owe any deference to the General Division on questions of natural justice, jurisdiction, and law.³ In addition, the Appeal Division may find an error in law, whether or not it appears on the face of the record.⁴

¹ AD2 (Respondent’s submissions), at para. 6.

² *Social Security Tribunal Regulations*, ss. 3 and 43.

³ *Canada (Attorney General) v. Paradis and Canada (Attorney General) v. Jean*, 2015 FCA 242, at para. 19.

⁴ *Department of Employment and Social Development Act*, s. 58(1)(b).

[15] A claimant for Employment Insurance benefits can be disqualified from receiving benefits for voluntarily leaving employment without just cause.⁵ The burden is on the Canada Employment Insurance Commission to show that the leaving was voluntary. Once it has established that the claimant left their employment voluntarily, the onus shifts to the claimant to demonstrate just cause for leaving.

[16] Here, the General Division found that there was a communication problem between the Appellant and the employer. As a result, the employer thought that, once school began, the Appellant would no longer be available to work, while the Appellant believed that he had been laid off.⁶ The General Division found that the Appellant's belief that he had been laid off was more believable than that he quit.⁷

[17] The General Division went on to find that the Appellant had "not met the burden of showing that, having regards to all the circumstances, he had no reasonable alternative to leaving his employment when he did."⁸ Therefore, the General Division found that he did not demonstrate just cause for leaving.

[18] However, the General Division failed to find that the Appellant's leaving was voluntary. By failing to decide whether the Appellant left voluntarily or was laid off before addressing the issue of just cause, the General Division erred in law and failed to exercise its jurisdiction.

Issue 2: If the General Division did err in law or fail to exercise its jurisdiction, should the Appeal Division refer the matter back to the General Division for reconsideration, or can the Appeal Division render the decision that the General Division should have rendered?

[19] Because the General Division's approach to fact-finding was not sufficiently complete, I am not able to make the decision that the General Division should have made.

[20] In addition, it will be necessary to consider contradictory evidence, find the facts, and weigh the evidence. These tasks are better suited to the General Division than to the Appeal Division.

⁵ *Employment Insurance Act*, ss. 29 and 30.

⁶ General Division decision, at para. 11.

⁷ *Ibid.*

⁸ *Ibid.*, at para. 12.

CONCLUSION

[21] The appeal is allowed, based on ss. 58(1)(a) and (b) of the *Department of Employment and Social Development Act*.

[22] The matter is referred back to the General Division for reconsideration, in accordance with these reasons and this decision.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVES:	N. D., self-represented S. Prud'Homme, for the Respondent
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