



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. R. v Canada Employment Insurance Commission*, 2019 SST 154

Tribunal File Number: AD-18-521

BETWEEN:

**M. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 21, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal dismisses the appeal.

### **OVERVIEW**

[2] The Appellant, M. R. (Claimant), worked as a dietary aide. She told the Commission she had voluntarily left her employment for physical and psychological health reasons. The Respondent, the Employment Insurance Commission, denied the Claimant's application for benefits because it found that she had reasonable alternatives to voluntarily leaving her employment. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the Claimant did not have just cause for voluntarily leaving her employment because she had reasonable alternatives to leaving.

[4] The Tribunal granted leave to appeal. The Claimant submits that the General Division failed to consider section 29(c)(xiii) of the *Employment Insurance Act* (EI Act), that is, whether there was undue pressure by the employer on the Claimant to leave her employment.

[5] The Tribunal must determine whether the General Division erred by finding that the Claimant had left her employment without just cause under the EI Act.

[6] The Tribunal dismisses the Claimant's appeal.

### **ISSUES**

[7] Did the General Division err by failing to consider section 29(c)(xiii) of the EI Act, that is, whether there was undue pressure by the employer on the Claimant to leave her employment?

[8] Did the General Division err by finding that the Claimant had reasonable alternatives to leaving her employment when she did?

## **ANALYSIS**

### **Appeal Division's Mandate**

[9] The Federal Court of Appeal has established that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESDA).<sup>1</sup>

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

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or 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 Tribunal must dismiss the appeal.

### **Issue 1: Did the General Division err by failing to consider section 29(c)(xiii) of the EI Act, that is, whether there was undue pressure by the employer on the Claimant to leave her employment?**

[12] This ground of appeal is without merit.

[13] Based on the evidence, the General Division determined that the Claimant met with her employer to say that she felt tired and exhausted because of her working conditions, which she found to be unacceptable. The employer then offered to write a letter of resignation for her, and she voluntarily accepted. The Claimant also testified that she would have liked the employer to ask her to stay, but the employer did not do so. However, the employer did ask her to stay in her position for another two weeks, which the Claimant agreed to.

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[14] Even though the Claimant was not satisfied with her working conditions, the evidence before the General Division does not show that the employer placed undue pressure on her to leave her employment. In fact, all along the employer gave her the choice of staying or leaving her employment.

[15] Therefore, the General Division did not err in failing to consider section 29(c)(xiii) of the EI Act.

**Issue 2: Did the General Division err by finding that the Claimant had reasonable alternatives to leaving her employment when she did?**

[16] This ground of appeal is without merit.

[17] The Claimant admitted during an interview with the Commission when she was applying for benefits and before the General Division that she did not look for a new job before leaving her employment.<sup>2</sup>

[18] The General Division also found from the evidence that the Claimant could have discussed her temporary health condition more with her employer and could have taken sick leave rather than leaving her employment when she did.

[19] The Tribunal recognizes that the Claimant was in a difficult situation at work. Nevertheless, she had an obligation to try to reach an agreement with the employer to address her temporary health needs and to look for another job before leaving the one she had.<sup>3</sup>

[20] The Tribunal is of the view that the General Division did not err when it found, based on the evidence before it, that the Claimant had reasonable alternatives to leaving her employment when she did.

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<sup>2</sup> GD3-21; GD3-52; General Division decision at para 19.

<sup>3</sup> *Her Majesty the Queen v Dietrich*, FCA, A-640-93.

**CONCLUSION**

[21] The Tribunal dismisses the appeal.

Pierre Lafontaine

Member, Appeal Division

HEARD ON:	February 14, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. R., Appellant  Manon Richardson, Representative for the Respondent