



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. S. v Canada Employment Insurance Commission*, 2019 SST 400

Tribunal File Number: AD-19-33

BETWEEN:

D. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 1, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal.

OVERVIEW

[2] The Appellant, D. S. (Claimant), was claiming employment insurance benefits when he accepted a job offer. Relying on the information in job posting and the interview, he believed the job would allow him to apply engineering principles and would allow him to work towards receiving his engineering license. However, two days into the orientation, the Claimant decided that the job duties were not as described and quit the job. The Canada Employment Insurance Commission (Commission) determined that the Claimant did not have just cause for quitting the job and disqualified him from receiving benefits. The Claimant requested a reconsideration and the Commission maintained its initial decision. He appealed to the General Division of the Tribunal.

[3] The General Division found that the Claimant left his employment voluntarily and that he had reasonable alternatives to quitting. He could have remained in the job until he secured other work or spoken to his supervisor about the job duties. The General Division concluded that he had not proven that he had just cause for voluntarily leaving his employment.

[4] The Claimant was granted leave to appeal to the Appeal Division. He submits that the General Division did not consider the evidence before it.

[5] The Tribunal must decide whether the General Division erred when it concluded that the Claimant did not prove he had just cause to voluntary leave his employment.

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

ISSUE

[7] Did the General Division err in law by ignoring the Claimant's evidence that he had no other reasonable alternatives but to leave his employment considering that the job duties were not as described in the job posting and job interview?

ANALYSIS

Appeal Division's mandate

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

[9] 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.²

[10] 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 Tribunal must dismiss the appeal.

Issue: Did the General Division err in law by ignoring the Claimant's evidence that he had no other reasonable alternatives but to leave his employment considering that the job duties were not as described in the job posting and job interview?

[11] The appeal is allowed.

[12] As stated correctly by the General Division, the issue before it was not whether the Appellant had good cause for refusing a job offer. The Appellant had accepted the job offer and became an employee. The issue was whether the Appellant had just cause

¹ *Canada (Attorney general) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney general)*, 2015 FCA 274.

² *Idem*.

to voluntary leave his employment pursuant to sections 29 and 30 of the *Employment Insurance Act*.

[13] The Appellant testified that the job posting listed an engineering degree as a requirement. He testified that the job posting and the job interview led him to believe that the work was an engineering job that would allow him to work toward receiving his engineering license. However, he testified that, once he started the job and did two days of orientation, he found that the job was actually at the technician level, and did not involve engineering principles. He testified that the job duties would not allow him to write any test codes for the products, but that he would simply have to run test codes written by an outside contractor. He testified that this meant that the job would not allow him to accumulate any hours that would count for his engineering license.

[14] The General Division accepted the Appellant's testimony that he believed that this job would not allow him to work towards his engineering license. However, it considered that it was not enough for the Appellant to demonstrate that it was reasonable or prudent for him to quit the job; he had to demonstrate that leaving the job was his only reasonable alternative.

[15] The General Division found that the Claimant had other reasonable alternative to quitting his job: He could have waited until his supervisor returned and discussed his concerns about the job duties and he could have remained in the job until he had secured another job offer from a different employer.

[16] With great respect, the General Division must be set aside. This is not the case of an employee being dissatisfied with his working conditions. This is a case where the Claimant was hired for one position, yet in reality, he had to perform another.

[17] For these reasons, the Tribunal is satisfied that the Claimant had no reasonable alternative but to leave his employment when he did. The Claimant had tried to find other employment but the fact is the Claimant was led to believe that he was going to be performing engineering work when in fact he was hired for something else.

CONCLUSION

[18] The Tribunal allows the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	April 23, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. S., Appellant Isabelle Thiffault, representative of the Respondent