



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. C. v Canada Employment Insurance Commission*, 2019 SST 661

Tribunal File Number: AD-18-827

BETWEEN:

M. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: July 12, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] M. C. is the Claimant in this case. In 2017, her and her husband moved from Quebec to Alberta. They later had to return to Quebec, however, to deal with the sale of their former family home and to dispose of its contents. The Claimant and her husband booked a five-day trip to Quebec, but the Claimant's employer refused to give her the time off that she needed for the trip. The Claimant quit her job shortly after learning that her employer had denied her time off request.

[3] After returning to Alberta, the Claimant applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) denied the application. In fact, the Commission disqualified the Claimant from receiving EI benefits, saying that she had quit her job without just cause.¹

[4] The Claimant challenged the Commission's decision to the Tribunal's General Division, but it dismissed her appeal. The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division.

[5] Despite errors in its decision, the General Division reached the right conclusion. As a result, I am dismissing the appeal. These are the reasons for my decision.

ISSUES

[6] When reaching this decision, I asked and answered the following questions:

¹ Section 30 of the *Employment Insurance Act* (EI Act) sets out the Commission's power to disqualify people from receiving EI benefits for voluntarily leaving a job without just cause. In this context, "just cause" has a very specific meaning, which I will discuss further below. Section 30 of the EI Act, and other relevant legal provisions, can be found at the end of this decision.

- a) Did the General Division commit an error of fact when it concluded that the Claimant's husband could have returned to Quebec alone?
- b) Did the General Division commit an error of law by not considering all of the reasons why the Claimant quit her job?
- c) Is the Claimant disqualified from receiving EI benefits?

ANALYSIS

[7] To succeed at the Appeal Division level, the Claimant must convince me that the General Division committed at least one of the three possible errors described in the *Department of Employment and Social Development Act* (DESD Act).²

[8] In this case, I considered whether the General Division based its decision on an error concerning the facts of the case. This is a relevant error under the DESD Act.³ However, not all factual errors can justify my intervention in this case. Rather, the General Division's factual finding must be relevant to its decision and must be clearly contradicted by the evidence or have no evidence to support it.⁴

[9] I also considered whether the General Division Decision contained an error of law. Any error of law could justify my intervention in this case.⁵

[10] If I find that the General Division committed an error, then the DESD Act also describes the powers that I have to fix that error.⁶

Issue 1: Did the General Division commit an error of fact when it concluded that the Claimant's husband could have returned to Quebec alone?

[11] Yes, the General Division committed an error of fact in this case.

² Section 58(1) of the DESD Act describes the three possible errors (also known as grounds of appeal) that would allow me to intervene in this case.

³ DESD Act, s 58(1)(c).

⁴ *Garvey v Canada (Attorney General)*, 2018 FCA 118 at para 6.

⁵ DESD Act, s 58(1)(b).

⁶ These powers are set out in section 59(1) of the DESD Act.

[12] Section 30 of the *Employment Insurance Act* (EI Act) disqualifies claimants from receiving benefits if they voluntarily left a job without just cause. Proving just cause can be difficult. Claimants must establish that, in all the circumstances of their case, they had no reasonable alternative but to quit.⁷ Section 29(c) of the EI Act lists a number of relevant circumstances that the Tribunal should consider in cases like this one, but other relevant circumstances can be considered too.

[13] In this case, the General Division concluded that the Claimant had quit her job for purely personal reasons because she did so to deal with the sale of a house in Quebec. However, the General Division noted that it was obliged to follow cases in which the courts had concluded that quitting a job for purely personal reasons does not amount to just cause within the meaning of the EI Act.⁸

[14] The General Division continued its analysis by considering the reasonable alternatives that the Claimant could have pursued instead of quitting her job. It found one: the Claimant's husband could have returned to Quebec alone to finalize the sale of the house and dispose of its contents.⁹ When making this finding, the General Division showed little concern for the Claimant's evidence regarding her husband's medical condition. More specifically, she said that going to Quebec alone would have been a danger to her husband's health.

[15] The General Division never questioned this evidence. Instead, it returned to its original theme, repeating that the Claimant had quit her job for personal reasons.

[16] Respectfully, the General Division's reasoning is somewhat circular. It set out to identify a reasonable alternative that the Claimant could have pursued instead of quitting her job. It found one. The General Division seemed unbothered by the possibility that the alternative it had identified was not, in fact, reasonable because it never needed to identify reasonable alternatives in the first place.

[17] In my view, the General Division could not describe an alternative that put the health of the Claimant's husband at risk as being reasonable. Indeed, the General Division committed an

⁷ *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

⁸ General Division decision at para 9.

⁹ General Division decision at para 11.

important factual error when it found that the Claimant's husband could travel to Quebec on his own.

[18] That finding was perverse and made without regard for the Claimant's uncontradicted evidence that such a trip would pose a serious danger to her husband's health. It is also clear that the General Division based its decision on this finding: it being the only reasonable alternative that the General Division had identified.

[19] As a result, the General Division committed a relevant error under the DESD Act. That error allows me to intervene in this case. Before considering how to try to fix that error, however, I will first consider whether the General Division decision contains any other errors.

Issue 2: Did the General Division commit an error of law by not considering all of the reasons why the Claimant quit her job?

[20] No, the General Division did not commit the legal errors that the Claimant has alleged.

[21] To begin, the General Division concluded in paragraph 12 of its decision that the Claimant's need to return to Quebec and the denial of her time off request are the main reasons why she quit her job. The General Division was entitled to make that finding and to focus on the main reason why the Claimant had quit her job.¹⁰

[22] In any event, section 29(c) of the EI Act lists a number of relevant circumstances that the Tribunal should consider when deciding whether a person quit their job with just cause. At the hearing before me, the Claimant argued that the General Division made an error of law by failing to recognize that she fell within two of these circumstances. More specifically, she had to accompany her husband to another residence and she had experienced dangerous working conditions.¹¹

[23] Concerning the first of these, it is not clear to me that the Claimant specifically raised section 29(c)(ii) of the EI Act before the General Division. However, the General Division was obviously aware of the Claimant's need to accompany her spouse to Quebec.

¹⁰ *Canada (Attorney General) v Imran*, 2008 FCA 17 at para 14.

¹¹ EI Act, ss 29(c)(ii) and 29(c)(iv).

[24] In any event, section 29(c)(ii) of the EI Act does not apply to the facts of this case. Under this provision, a person may have just cause for voluntarily leaving their employment if they were obliged to accompany a spouse to another residence.

[25] In this context, “residence” is not the same as “home”. At the time of their trip to Quebec, the Claimant and her husband resided in Alberta. They were not going to Quebec to establish another residence. To the contrary, they were simply going for five days to sell their former family home.

[26] Concerning section 29(c)(iv), the Claimant argued that winter driving in Edmonton was a danger to her safety. The General Division clearly considered this argument and concluded that this was a known risk that the Claimant had accepted when she took the job.¹²

[27] I see no reason to interfere with this part of the General Division decision. Indeed, if the General Division had accepted this argument, the Claimant (and many other Canadians) would be entitled to quit their jobs every winter and preserve their entitlement to EI benefits. The General Division was right to reject such an absurd outcome.

[28] Finally, the Claimant argued that she should be paid EI benefits for roughly five months of unemployment because she has paid her taxes for many years and because she has not applied for EI benefits in earlier periods, even though she would have been eligible to receive them.

[29] While a person must contribute to the EI program to be eligible to receive benefits, there are other requirements that the Commission must also consider before paying benefits to that person. And that assessment is made around the application date. It is not based on some previously unused period of eligibility.

[30] Critically, the Commission had imposed an indefinite disqualification against the Claimant. The General Division committed no error by focusing on the appropriateness of that indefinite disqualification rather than on the amounts that she had contributed to the EI program. The Claimant’s contributions to the EI program were not a relevant issue in this case.

¹² General Division decision at para 12.

[31] Except for the factual error identified above, therefore, I am satisfied that the General Division considered the relevant circumstances and applied the correct legal test for just cause, as set out under section 29(c) of the EI Act. The General Division was also right not to base its decision on the Claimant's history as a taxpayer or on any earlier EI benefits that the Claimant might have left unclaimed.

Issue 3: Is the Claimant disqualified from receiving EI benefits?

[32] Yes, section 30 of the EI Act disqualifies the Claimant from receiving EI benefits.

[33] Under Issue 1, above, I found that the General Division had committed an error of fact. In my view, the best way of fixing that error is by giving the decision that the General Division should have given.¹³ I arrived at this conclusion because

- a) the appeal record is complete in the sense that the parties have already had a full opportunity to present their evidence and arguments;
- b) I have reviewed the entire appeal record and listened to the audio recording of the General Division hearing. As a result, there is little value in returning the matter to the General Division; and
- c) the EI Act and DESD Act create a decision-making system that is meant to provide quick determinations.¹⁴

[34] I recognize that the General Division committed an error when it concluded that a reasonable alternative to the Claimant quitting her job was to let her husband travel to Quebec by himself to take care of the sale of the former family home. I have concluded, however, that the Claimant had other reasonable alternatives that she could have pursued instead of quitting her job when she did.

¹³ Giving the decision that the General Division should have given is one of my powers under section 59(1) of the DESD Act.

¹⁴ See, for example, section 64(1) of the DESD Act along with sections 2 and 3(1) of the *Social Security Tribunal Regulations*.

[35] To recap the facts of this case, the Claimant and her husband had found a buyer for their house in Quebec. Thinking that they could easily get the time off that they needed, they made all of the necessary arrangements, set the date when they would have to attend at a notary's office in Quebec, and booked their flights.

[36] The Claimant then submitted her request for time off, but her employer refused it. The Claimant quit her job a short time later. As a result, I agree that the Claimant's inability to get the time off needed to travel to Quebec is the main reason why she quit her job.

[37] According to the employer, it refused the Claimant's time off request because she submitted it late (less than two weeks before her date of departure) and because November is a busy time in the retail industry.¹⁵

[38] At the General Division hearing, the Claimant admitted that she was late submitting her request for time off (though perhaps by as little as a day), but denied that the store was busy at the relevant time. The Claimant explained that her work schedule did not allow her to submit her time off request on the precise date when it was due.

[39] Rather than quitting her job when she did, I find that it would have been reasonable for the Claimant to confirm that she could get the time off that she needed from work before booking plane tickets and before confirming the date when she would attend at the notary's office. She could also have made a greater effort to submit her time off request on time and to find people to cover whatever shifts she might have missed.

[40] The Claimant also said that she was worried that any delay in finalizing the sale of the house might have meant that the sale would fall through. But there is no evidence that she ever asked whether the timing of the sale (and of her trip to Quebec) could be delayed. The Claimant failed to pursue this reasonable option too.

[41] I completely understand the difficult situation in which the Claimant found herself, though she helped to create that situation by assuming that her employer would approve her time off request.

¹⁵ GD3-38.

[42] I also understand that delaying the sale of the Quebec house might have come at a significant financial cost. Indeed, the Claimant's decision may well have been reasonable in all the circumstances. Nevertheless, the fact that the Claimant had good reasons for quitting her job does not mean that she had just cause within the meaning of the EI Act.¹⁶

[43] It is important to remember that the EI Act was not designed to compensate people who quit their jobs voluntarily. The "just cause" requirement is an exception to this rule and is often difficult to meet.

[44] As the General Division noted, the courts have consistently found that quitting one's job for purely personal reasons does not constitute just cause within the meaning of the EI Act.¹⁷ As a result, I too have concluded that the financial loss that the Claimant might have suffered for keeping her job is a personal matter and does not amount to just cause under the EI Act.

[45] Regardless of the error that I identified above, I have concluded that the General Division was right to dismiss the Claimant's appeal. In other words, I agree that section 30(1) of the EI Act disqualifies the Claimant from receiving EI benefits.

CONCLUSION

[46] In this decision, I found that the General Division committed an error of fact. Despite that error, however, I am satisfied that the Claimant had reasonable alternatives to quitting her job when she did. As a result, the Claimant was unable to establish just cause and the Commission was entitled to impose an indefinite disqualification against her.

¹⁶ *Imran*, *supra* note 10.

¹⁷ *Tanguay v Unemployment Insurance Commission* (1985), 68 NR 154 (FCA); *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.

[47] The appeal is dismissed.

Jude Samson
Member, Appeal Division

HEARD ON:	May 15, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. C., Appellant S. Prud'Homme, Representative for the Respondent (written submissions only)

Relevant Legal Provisions

Department of Employment and Social Development Act

Grounds of appeal

58 (1) The only grounds of appeal are that

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division 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.

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Decision

59 (1) The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

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Powers of tribunal

64 (1) The Tribunal may decide any question of law or fact that is necessary for the disposition of any application made under this Act.

Social Security Tribunal Regulations

General principle

2 These Regulations must be interpreted so as to secure the just, most expeditious and least expensive determination of appeals and applications.

Informal conduct

3 (1) The Tribunal

- (a) must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit;

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Employment Insurance Act

Interpretation

29 For the purposes of sections 30 to 33,

[...]

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

[...]

(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,

[...]

(iv) working conditions that constitute a danger to health or safety;

• • •

Disqualification — misconduct or leaving without just cause

30 (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless...