



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v D. M.*, 2019 SST 668

Tribunal File Number: AD-19-25

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

D. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: July 24, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] D. M. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits after working 16 weeks as part of a skills development program. During that program, he worked for a large grocery retailer.

[3] The Commission refused the Claimant's application. More specifically, the Commission disqualified the Claimant from receiving EI benefits because it decided that he had voluntarily left his job without just cause.¹ Following the Claimant's request, the Commission did a fresh review of the file, but it maintained its initial decision on reconsideration.

[4] The Claimant then successfully appealed the Commission's decision to the Tribunal's General Division. In short, the General Division concluded that the Claimant had refused to extend his expiring employment relationship, which is different from voluntarily leaving a job within the meaning of the *Employment Insurance Act* (EI Act).

[5] As an Appeal Division member, I must now decide the Commission's appeal of the General Division decision. In particular, the Commission is arguing that the General Division based its decision on an outdated Federal Court of Appeal decision and ignored later amendments to the EI Act. The Commission also argues that I should reinstate the disqualification that it had imposed against the Claimant.

[6] I mostly agree with the Commission's arguments. As a result, I am allowing the appeal. These are the reasons for my decision.

¹ In this context, "just cause" has a very specific meaning. It is defined in section 29(c) of the *Employment Insurance Act* (EI Act). Section 30 of the EI Act establishes the Commission's power to disqualify claimants from receiving EI benefits in cases like this one. These sections, and other relevant legal provisions, can be found at the end of this decision.

ISSUES

[7] As part of this decision, I answered the following questions:

- a) Did the General Division commit an error of law by failing to consider relevant sections of the EI Act?
- b) If so, does section 30 of the EI Act disqualify the Claimant from receiving EI benefits?

ANALYSIS

[8] To succeed at the Appeal Division level, the Commission must establish 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

[9] In this case, I focused on whether the General Division decision contained an error of law. Any error of law could justify my intervention in this case.³

[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.⁴

Issue 1: Did the General Division commit an error of law by failing to consider relevant sections of the EI Act?

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

[12] Section 30 of the EI Act disqualifies claimants from receiving benefits if they voluntarily left a job without just cause. The General Division correctly noted that this is a two-part analysis. First, the Commission had the obligation to prove that the Claimant left his job voluntarily. If so, the Claimant then had the obligation to prove that he had done so with just cause.

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)(b).

⁴ These powers are set out in section 59(1) of the DESD Act.

[13] In this case, the parties agree that the Claimant had the option of working beyond the end of his 16-week program.⁵ According to the Commission, the Claimant's refusal to continue working means that he voluntarily left his job.

[14] Instead, however, the General Division concluded that a person does not voluntarily leave their job within the meaning of the EI Act by refusing to extend an employment relationship that is about to expire. When reaching this decision, the General Division relied on the Federal Court of Appeal's 1994 decision in *Canada (Attorney General) v Cecconi*.⁶

[15] By relying on this case, however, the Commission argues that the General Division ignored later amendments to the EI Act. In particular, the General Division failed to apply section 29(b.1) of the EI Act, which states the following:

29 For the purposes of sections 30 to 33,

[...]

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs [...]

[16] I agree. This provision applied to the facts of this case, and the General Division committed an error of law by failing to consider it.

[17] Parenthetically, I note that the parties' submissions before the General Division were focused on the second part of the analysis: Did the Claimant have just cause for leaving his job when he did?

[18] It would have been better if the General Division had alerted the parties to the fact that its decision might turn on the first part of the analysis instead and that it had, on its own initiative, found a decision that was potentially determinative in this case. Instead, the General Division's reliance on the *Cecconi* decision appears to have come as a surprise to the parties.

⁵ See pages GD3-30 and GD3-32.

⁶ *Cecconi*, CUB 23828, affirmed *Canada (Attorney General) v Cecconi*, A-49-94 (FCA).

Issue 2: Does section 30 of the EI Act disqualify the Claimant from receiving EI benefits?

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

[20] I have already found that the General Division committed an error of law in this case. I have now decided to give the decision that the General Division should have given because:⁷

- 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.⁸

[21] Returning to the two-part analysis discussed above, the first part is whether the Claimant voluntarily left his job. The relevant question is this: Did the Claimant have a choice to stay or to leave his employment?⁹ The answer is clearly yes. The Claimant could have continued working for his employer had he chosen to do so. As a result, the Commission has met its obligation of proving the first part of the legal test.

[22] The Claimant now has to establish that he had just cause for leaving his job when he did. Proving just cause can be difficult. The Claimant must establish that, in all the circumstances of his case, he had no reasonable alternative but to quit.¹⁰ Section 29(c) of the EI Act lists a number of relevant circumstances that the Tribunal should consider in cases like this one, but I can consider other relevant circumstances too.

⁷ Giving the decision that the General Division should have given is one of my powers under section 59(1) of the DESD Act.

⁸ See, for example, section 64(1) of the DESD Act along with sections 2 and 3(1) of the *Social Security Tribunal Regulations*.

⁹ *Canada (Attorney General) v Peace*, 2004 FCA 56 at para 15.

¹⁰ *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

[23] In this case, the Claimant argues that he had to quit his job because he worked in a toxic environment. In support of this, he says that his supervisor consistently said inappropriate things about his cousin and that she belittled him in front of others. In addition, the Claimant was involved in a workplace accident that was not treated with the seriousness it deserved and other employees had started rumours about how his girlfriend dictated his shifts.

[24] I sympathize with the Claimant. In order to establish just cause, however, people in his circumstances normally have an obligation to try to resolve workplace conflicts or to show efforts at finding another job before leaving the one they already have.¹¹ In this case, the Claimant did neither of those things.

[25] I recognize that the Claimant said that his supervisor and the store managers were all friends, so there was no point in speaking to any of them. However, he worked for a very large organization, and there was evidence that he could have brought his complaints to a store manager, assistant store manager, onsite human resources person, or even to someone from the Employee Assistance Program.¹² Instead, the Claimant had already decided to leave his job, so he did not pursue any of these possibilities.

[26] It is worth highlighting that the Claimant's decision may well have been reasonable in all the circumstances. However, he did not establish just cause within the meaning of the EI Act. As a result, section 30 of the EI Act disqualifies him from receiving EI benefits.

CONCLUSION

[27] In this decision, I found that the General Division committed an error of law. I also decided to give the decision that the General Division should have given: the Claimant voluntarily left his job without just cause. As a result, section 30 of the EI Act disqualifies the Claimant from receiving EI benefits.

¹¹ *White, supra* note 10 at para 5.

¹² GD3-32.

[28] The appeal is allowed.

Jude Samson
Member, Appeal Division

HEARD ON:	May 29, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Rachel Paquette, Representative for the Appellant D. M., Self-represented

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,

[...]

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(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:

(i) sexual or other harassment,

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

(iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,

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

(v) obligation to care for a child or a member of the immediate family,

(vi) reasonable assurance of another employment in the immediate future,

(vii) significant modification of terms and conditions respecting wages or salary,

(viii) excessive overtime work or refusal to pay for overtime work,

(ix) significant changes in work duties,

(x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,

(xi) practices of an employer that are contrary to law,

(xii) discrimination with regard to employment because of membership in an association, organization or union of workers,

(xiii) undue pressure by an employer on the claimant to leave their employment, and

(xiv) any other reasonable circumstances that are prescribed.

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...