



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *W. Y. v Canada Employment Insurance Commission*, 2019 SST 687

Tribunal File Number: AD-19-348

BETWEEN:

**W. Y.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: July 30, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed.

### **OVERVIEW**

[2] W. Y. (Claimant) worked in a X. He quit this job and applied for Employment Insurance benefits. The Canada Employment Insurance Commission decided that the Claimant was disqualified from receiving benefits because he voluntarily left his employment without just cause.

[3] The Claimant appealed the Commission's decision to the Tribunal. The Tribunal's General Division dismissed the appeal, deciding that the Claimant had left his employment without just cause. The Appeal Division must intervene because the General Division based its decision on an erroneous finding of fact made without regard for all of the material before it. However, when all of the evidence is considered, the same conclusion is reached and the appeal is dismissed.

### **PRELIMINARY MATTER**

[4] The Canada Employment Insurance Commission did not attend the appeal hearing. Therefore, I relied only on its written submissions in making the decision in this appeal.

### **ISSUES**

[5] Did the General Division base its decision on an erroneous finding of fact under the DESD Act when it decided that the Claimant did not have just cause to voluntarily leave employment because he was not paid for overtime?

[6] Did the General Division make an error in law or fail to observe a principle of natural justice because it failed to consider the Claimant's evidence from the provincial labour board regarding pay for overtime?

[7] Did the General Division fail to observe a principle of natural justice when it did not ask the Claimant if he looked for other work before he left his job?

## ANALYSIS

[8] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim, but a determination of whether the General Division made an error under the DESD Act. The Act also states that there are only three kinds of errors that can be considered. They are that the General Division failed to observe a principle of natural justice, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. If at least one of these errors was made, the Appeal Division can intervene. The Claimant's arguments are considered in this context below.

[9] The Claimant argues that the General Division erred when it failed to consider the Alberta Government Receipt and Conclusion of Employment Standards Complaint document that he sent to the Tribunal before the General Division hearing.<sup>1</sup> This document shows that the Claimant received \$2,300 in satisfaction of a claim under the *Alberta Employment Standards Code* against the Employer. The Claimant testified that he made a claim to the "labour department" about unpaid overtime. The General Division decision considered the Claimant's argument that he left work because of unpaid overtime, but it failed to mention this document.<sup>2</sup> This document substantiates the Claimant's claim that he worked overtime and was not paid for it.

[10] Therefore, the General Division's finding of fact that there was insufficient evidence to support that the Claimant was working overtime for which his employer refused to compensate him<sup>3</sup> is an erroneous finding of fact. This finding of fact was made without regard for the evidence from the Alberta government. The General Division's decision was based, in part, on this finding of fact. Therefore, the Appeal Division must intervene.

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<sup>1</sup> GD5-4

<sup>2</sup> General Division decision at paras.28-45

<sup>3</sup> *Ibid.* at para. 45

[11] The Claimant also argues that the General Division erred in law and failed to observe a principle of natural justice because it failed to consider this evidence. However, the argument is best characterized as an erroneous finding of fact.

[12] The General Division did not make an error in law.

[13] The principles of natural justice are concerned with ensuring that parties to an appeal have the opportunity to present their legal case to the Tribunal, to know and answer the other party's legal case, and to have a decision made by an impartial decision maker based on the law and the fact.

[14] There is no suggestion that the General Division member was biased.

[15] The Claimant was not prevented from presenting his case or answering the legal case against him. The failure of the General Division member to ask questions about the Claimant's job search efforts did not prevent him from presenting evidence on this topic. It is for the parties to decide what evidence to present to the Tribunal; not for the Tribunal Member to ask questions on all possible issues.

[16] Therefore, there has been no failure to observe a principle of natural justice.

## **REMEDY**

[17] The DESD Act sets out what remedies the Appeal Division can give when it intervenes. This includes referring the matter back to the General Division for reconsideration, or giving the decision that the General Division should have given.<sup>4</sup> It also states that the Tribunal can decide any question of law or fact that is necessary to dispose of an appeal.<sup>5</sup> In addition, the *Social Security Tribunal Regulations* require that appeals be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.

[18] The Claimant applied for Employment Insurance benefits in September 2018. Further delay would be incurred if the appeal were referred back to the General Division. In addition, the

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<sup>4</sup> DESD Act s. 59(1)

<sup>5</sup> DESD Act s. 64

facts are not in dispute, and the record before me is complete. Therefore, it is appropriate for me to give the decision that the General Division should have given.

[19] The Claimant did not challenge the General Division's findings of fact that he did not have just cause to leave his employment because of dangerous working conditions, a change in his duties, or a danger due to his health conditions. I adopt the General Division's reasoning and conclusions on these issues.

[20] I have to decide whether the Claimant has just cause to leave his employment because of a refusal to pay for overtime work, which the General Division failed to consider fully because it did not consider the Alberta government document.<sup>6</sup>

[21] The Claimant's evidence is that he worked for nine hours each day, six days each week with no breaks. He testified that although he was to work a split shift and not work from 2:00pm to 4:00pm, he worked during this time because only he and the Employer were in the kitchen. He also testified that he did not get breaks during his shifts. The Employer disputed this. However, the Claimant also produced the Receipt and Conclusion of Employment Standards Complaint. It demonstrates that the Employer paid \$2,300 to the Claimant after an investigation of a complaint for unpaid overtime work. I place more weight on the Claimant's sworn testimony and the Alberta government document. The government document corroborates the Claimant's testimony.

[22] In addition, the Employer's evidence was not sworn, but given in the form of notes taken by an employee of the Commission. It is not direct evidence.

[23] Therefore, I am satisfied that the Claimant was not paid for overtime until he made the Alberta Government complaint.

[24] The *Employment Insurance Act* states that all of the circumstances must be considered when deciding whether a claimant had just cause to leave employment,<sup>7</sup> including the Claimant's obligation to try to resolve conflicts with the employer or to show that they have made efforts to

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<sup>6</sup> *Employment Insurance Act* s. 29(c)(viii)

<sup>7</sup> *Employment Insurance Act* s. 29(c)

seek other work before they quit a job.<sup>8</sup> There is no evidence that the Claimant tried to find another job before he quit. Therefore, he did not meet this legal obligation, and did not have just cause for quitting.

[25] Therefore, although the General Division based its decision on an erroneous finding of fact made without regard for all of the material that was before it, when all of the evidence is considered, I reach the same conclusion: the Claimant did not have just cause to voluntarily leave his employment.

### **CONCLUSION**

[26] The appeal is dismissed for these reasons.

Valerie Hazlett Parker  
Member, Appeal Division

HEARD ON:	July 24, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	W. Y., Appellant

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<sup>8</sup>White 2011 FCA 190