Social Security Tribunal of Canada
Tribunal de la sécurité sociale du Canada

Citation: *D. G. v Canada Employment Insurance Commission*, 2019 SST 694

Tribunal File Number: AD-19-23

BETWEEN:

D. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: July 31, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] D. G. is the Claimant in this case. In February 2018, he was hired to join a core drilling team. The Claimant had some experience in core drilling, but he had worked in seismic drilling for the previous 10 years or so.

[3] When the Claimant arrived at the job site, he says that the work was very different from what he expected. Briefly, he alleges that the poor working conditions, low pay, and lack of respect all made his job intolerable.

[4] As a result, the Claimant quit his job shortly after it started. He then applied for Employment Insurance (EI) regular benefits, but the Canada Employment Insurance Commission denied his application. More specifically, the Commission disqualified the Claimant from receiving benefits because he had voluntarily left his job without just cause.[1]

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division, but it dismissed his appeal. The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division.[2]

[6] I am prepared to accept that the General Division made an error of law by not considering all of the reasons why the Claimant left his job. Regardless of that error, however, I am convinced that the outcome of the case was correct. As a result, I am dismissing the appeal. These are the reasons for my decision.

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[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.

[2] I granted leave (or permission) to appeal in this case on March 4, 2019.

ISSUES

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

a) Did the General Division commit an error of law by not considering all of the reasons why the Claimant left his job?

b) Does the EI Act disqualify the Claimant from receiving EI benefits?

[8] I reassessed the Claimant's case based on my answer to the first question. As a result, I did not need to consider the errors of fact that the Claimant alleged the General Division to have made.

ANALYSIS

[9] Before I can intervene in this case, 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).[3]

[10] In this case, I focused on whether the General Division decision contained an error of law. Based on the wording of the DESD Act, any error of law could justify my intervention in this case.[4]

[11] If I find that the General Division committed an error, then the DESD Act also describes the powers that I have to try to fix that error.[5]

Issue 1: Did the General Division commit an error of law by not considering all of the reasons why the Claimant left his job?

[12] I am prepared to accept that the General Division committed an error of law by not considering all of the reasons why the Claimant left his job.

[3] 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.
[4] DESD Act, s 58(1)(b).
[5] These powers are set out in section 59(1) of the DESD Act.

[13] 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.[6]

[14] When the General Division is assessing just cause, section 29(c) of the EI Act lists a number of relevant circumstances that it must consider (if applicable). But other relevant circumstances can be considered too.[7] Indeed, the courts have said that just cause exists whenever a person is able to establish that they had no reasonable alternative but to leave their job.[8]

[15] In this case, therefore, the General Division was obliged to consider all of the relevant circumstances, or reasons why the Claimant left his job. In addition, the General Division had to consider the totality or combined impact of these circumstances when assessing the reasonable alternatives available to the Claimant.[9]

[16] Critically, however, the General Division's obligation to consider all of the relevant circumstances does not mean that they are all equally important. To the contrary, the General Division will sometimes focus on the main reason or reasons why a claimant left their job.[10] In those cases, however, the General Division must explain why it found some circumstances to be more important than others.

[17] In this case, the Claimant described the reasons for leaving his job in this way:[11]

> I left my employment due to the cumulative effect of having to work night shift in the extreme cold for long hours, having to travel an additional 1.5 to 2 hours a day without pay, having to suffer inflamed varicose veins, all while being paid less per hour than others of lower qualification.

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[6] *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[7] *Canada (Attorney General) v Campeau*, 2006 FCA 376 at para 18.
[8] *Canada (Attorney General) v Peppard*, 2017 FCA 110 at para 7; *Canada (Attorney General) v Murugaiah*, 2008 FCA 10 at para 7.
[9] *Cronk* CUB 21681.
[10] *Canada (Attorney General) v Imran*, 2008 FCA 17 at para 14.
[11] AD2-1.

[18] The Claimant argues, however, that the General Division focused almost exclusively on the Claimant's feeling that he was underpaid. In addition, the Claimant argues that the General Division should not have minimized the importance of the other reasons why he left his job because of statements he made suggesting that he would have continued working for his previous employer were it not for the fact that he felt disrespected because of his low pay.

[19] I recognize that the General Division does not need to mention every piece of evidence that it has in front of it.[12] I am prepared to accept, however, that the Claimant's unpaid travel time, 14 to 14.5-hour work days, and the Claimant's difficulty adjusting to night shifts (while still at the camp as opposed to after returning home) are all circumstances that the General Division should have considered.

[20] Indeed, I note that some of these circumstances could potentially fall within, or are similar to, those listed under section 29(c) of the EI Act.

[21] As a result, I am prepared to accept that the General Division committed an error of law: it did not consider all of the relevant circumstances in the Claimant's case.

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

[22] Regardless of the error above, I nevertheless agree with the General Division's conclusion: the EI Act disqualifies the Claimant from receiving EI benefits because he voluntarily left his job without just cause.

[23] Above, I found that the General Division committed an error of law. 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;

[12] *Simpson v Canada (Attorney General)*, 2012 FCA 82 at para 10.
[13] Giving the decision that the General Division should have given is one of my powers under section 59(1) of the DESD Act.

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]

[24] The Tribunal conducts a two-part analysis when assessing disqualifications under section 30 of the EI Act. First, the Commission has the obligation to prove that the Claimant left his job voluntarily. If so, the Claimant then has the obligation to prove that he did so with just cause.

[25] In this case, there is no dispute that the Claimant left his job voluntarily. The only relevant question is whether the Claimant had just cause for voluntarily leaving his employment. Above, I described the legal test that the Claimant needs to meet to establish just cause.

[26] As mentioned above, the Claimant says that he quit his job because of a combination of factors:

a) He felt disrespected and underpaid after learning that other workers were being paid more than he was, even though they had similar amounts of experience;

b) Work shifts were excessively long (averaging 14 to 14.5 hours per day, including travel time, which the Claimant was surprised to learn was unpaid);

c) Harsh working conditions aggravated the Claimant's varicose veins (the work site had been cleared of trees, meaning that there was little reprieve from the cold and wind); and

d) The Claimant had difficulty adjusting to night shifts, including the reversed eating schedule (essentially, he ate breakfast at the end of the day and dinner at the start of the day).

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

[27] In my view, these circumstances, whether considered individually or cumulatively, do not amount to just cause within the meaning of the EI Act.

[28] With respect to the Claimant's rate of pay, the Claimant and his employer agreed to it. The fact that the Claimant later learned that other workers might have been paid more than he was is of little relevance to this case. Indeed, the courts have frequently concluded that inadequate income does not constitute just cause within the meaning of the EI Act.[15]

[29] With respect to the Claimant's working conditions, I accept that they were significantly more difficult than the Claimant expected. However, even the Claimant recognized that difficult working conditions are normal in his industry and that some of his expectations were based on his previous work in core drilling, which was some 10 years ago.

[30] The Claimant argued that his employer should have been more honest and upfront with him, especially given that a mutual contact had recommended him for the job. But given the difficult conditions that are common in the Claimant's industry and the length of time since the Claimant had done any core drilling work, it is also true that the Claimant could have asked more questions before accepting this offer of employment. In this sense, the Claimant also accepted the working conditions in which he found himself.

[31] Importantly, there is no evidence that the Claimant's employer unilaterally changed or misrepresented the Claimant's working conditions. This is not a case where the Claimant was given a job fundamentally different from the one for which he was hired. In addition, the Claimant has not suggested that any of his employer's practices were contrary to law or that they violated his conditions of employment.[16]

[32] In cases involving difficult working conditions, a person wanting to establish just cause must normally show that they took reasonable steps to improve their situation by discussing their concerns with their employer.[17]

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[15] *Canada (Attorney General) v Tremblay*, A-50-94; *Campeau*, *supra* note 7 at paras 18-21; *Canada (Attorney General) v Langlois*, 2008 FCA 18 at para 31.
[16] GD3-28 to 29.
[17] *Canada (Attorney General) v Hernandez*, 2007 FCA 320 at para 5.

[33] In this case, the Claimant says that he met that requirement by having the following discussions with his employer:

a) When the Claimant first arrived at the job site and learned that he would be working night shifts, he asked if he could be put on the day shift instead, but his request was denied;[18] and

b) When the Claimant learned that he was being paid less than other similarly qualified workers, he raised the issue with his employer. The Claimant then quit after his employer refused to give him a raise.

[34] According to the Claimant, the fact that his employer refused these two requests, combined with the Claimant's knowledge of the industry, indicates that his employer would have also refused any other request that he might have made.

[35] I disagree. In my view, the Claimant could have taken other reasonable steps to try to have his concerns addressed. For example, it is one thing for the Claimant to have asked to work day shifts when first arriving at the job site. It is quite another, however, to make such a request based on experience, adjustment difficulties, and the exacerbation of a medical condition (potentially supported by a doctor's note).

[36] Overall, therefore, I find that the Claimant had reasonable alternatives to leaving his job when he did. Moreover, this conclusion holds true regardless of whether I consider the Claimant's reasons for leaving his job individually or cumulatively. For example, the Claimant could have:

a) discussed his concerns with his employer in a more thorough way and explored the types of accommodation that might be possible in his circumstances;

b) requested medical leave or sought the opinion of a doctor concerning his ability to work in the relevant conditions. Indeed, the Claimant acknowledged that he could have likely obtained a letter from a vein specialist near his home.[19] Alternatively, the

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[18] AD1-15.
[19] AD1-11.

Claimant was due some time off, and he could have continued working until he consulted his family physician; and

c) continued working until he found other work. While the Claimant did attempt to find work in his industry, it was close to the end of the drilling season, which means that the weather was warming and that he did not have long left to work. It also means that work in his industry was scarce, but the Claimant does not seem to have made efforts at finding any other kind of work.

[37] The Claimant also asserted that, even if he had not quit his job when he did, he would have stopped working soon after because:

a) any request for accommodation that he might have made would likely have resulted in a lay-off; and

b) the Claimant's adjustment to regular hours after returning home was extremely difficult.

[38] As a result, the Claimant argued that imposing an indefinite disqualification against him was particularly harsh, since he would not have worked much longer in any event.

[39] There is a certain appeal to this argument. However, the EI Act creates an important distinction between cases where the claimant is laid off by their employer and cases where the claimant voluntarily leaves a job, which is what happened here.

[40] In addition, binding decisions from the Federal Court of Appeal limit the Tribunal to considering only those factors that existed at the time the Claimant left his job.[20] In this case, at the time the Claimant quit his job, he did not yet know about the adjustment difficulties that he would face when he returned home for his time off. As a result, I am unable to consider this factor.

[20] *Canada (Attorney General) v Lamonde*, 2006 FCA 44 at para 8; *Canada (Attorney General) v Langevin*, 2011 FCA 163 at para 9.

CONCLUSION

[41] In this decision, I found that the General Division committed an error of law. As a result, I reassessed the Claimant's case. Ultimately, however, the General Division member and I both arrived at the same conclusion.

[42] In brief, I am satisfied that the Claimant had reasonable alternatives to leaving his job when he did. As a result, the Claimant was unable to establish just cause for voluntarily leaving his employment, and the Commission was entitled to impose an indefinite disqualification against him.

[43] The appeal is dismissed.

Jude Samson
Member, Appeal Division

HEARD ON:	May 29, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. G., Appellant S. Prud'Homme, Representative for the Respondent (written representations 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;

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:

(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…