



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. B. v Canada Employment Insurance Commission and X*, 2019 SST 752

Tribunal File Number: AD-19-106

BETWEEN:

D. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

X

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: August 12, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] D. B. is the Claimant in this case. The Employer, X, is a staffing and employment agency that matches workers, like the Claimant, to clients who have jobs that need doing, usually on a temporary basis. The Employer refers to these temporary jobs as assignments.

[3] The Claimant received an assignment in October 2017, which continued until December 22, 2017. The Employer's client ended the assignment on that day. That decision threw the Claimant into a very difficult financial situation just before the Christmas holidays. The Claimant's anger boiled over when the Employer did not issue his record of employment as quickly as he would have liked and refused to pay him the holiday pay to which he felt that he was entitled.

[4] Since he was out of work, the Claimant applied for Employment Insurance (EI) regular benefits. At first, the Canada Employment Insurance Commission decided that the Claimant had quit his job without just cause, as defined in the *Employment Insurance Act* (EI Act).¹ As a result, the Commission indefinitely disqualified the Claimant from receiving EI benefits. The Claimant successfully challenged the Commission's initial decision. In other words, the Commission removed his disqualification on reconsideration.

[5] The Employer then appealed the Commission's decision to the Tribunal's General Division. In short, the General Division restored the disqualification. It concluded that the Claimant voluntarily quit his job on December 27, 2017, because he refused all of the alternative assignments that the Employer had offered to him on that day.

¹ In this context, "just cause" has a very specific meaning. It is defined in section 29(c) of the 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.

[6] The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division.² In my view, the Claimant has not established that the General Division committed any relevant errors. As a result, I am dismissing his appeal. These are the reasons for my decision.

PRELIMINARY MATTERS

[7] The Claimant did not seem well prepared for the hearing and his frustration became obvious at several points throughout the hearing. In fairness, the Claimant has been trying to manage extremely difficult circumstances, both in terms of his finances and his health.

[8] At the start of the hearing, I tried several times to explain the Appeal Division's role to the parties, but the Claimant would not let me finish. I also offered to adjourn the hearing several times, but the Claimant insisted on proceeding, and so we did.

ISSUE

[9] Did the General Division commit an error of fact when it concluded that the Claimant refused the alternative work that the Employer offered to him on December 27, 2017?

ANALYSIS

[10] 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

[11] In this case, I focused on whether the General Division based its decision on an important error concerning the facts of the case. Critically, not all factual errors can justify my intervention in a case.⁴ For example, I cannot intervene in a case because the General Division made an error concerning some irrelevant detail. However, I can intervene in a case if the General Division

² I granted leave (or permission) to appeal in this case on March 28, 2019.

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 More specifically, section 58(1)(c) of the DESD Act allows me to intervene in a case if 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.

bases its decision on a factual finding that is clearly contradicted by the evidence or has no evidence to support it.⁵

Did the General Division commit an error of fact when it concluded that the Claimant refused the alternative work that the Employer offered to him on December 27, 2017?

[12] No, the General Division did not make a relevant error of fact in this case.

[13] 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 to prove that the Claimant left his job voluntarily. If so, the Claimant then had to prove that he had done so with just cause.

[14] This case focused entirely around the first part of the analysis. Importantly, section 29(b.1)(i) of the EI Act defines voluntarily leaving one's employment to include "the refusal of employment offered as an alternative to an anticipated loss of employment."

[15] The critical question in this case, therefore, was whether the Claimant refused assignments that the Employer had offered to him as an alternative to an expected loss of employment.

[16] The parties agree that the Claimant finished an assignment on December 22, 2017, but that the Employer kept him employed (without work) for an additional week.⁶ The parties also agree that the Claimant phoned the Employer on December 27, 2017, to ask for his record of employment.

[17] According to the Employer's note of that call, it had three alternative assignments to offer to the Claimant on that day.⁷ However, the note acknowledges that the conversation got heated, the Claimant kept demanding his record of employment, and he might not have allowed the Employer to describe all three possibilities. Nevertheless, the Employer did apparently warn the Claimant that, by declining three offers of alternate work, he was effectively resigning.

⁵ *Garvey v Canada (Attorney General)*, 2018 FCA 118 at para 6.

⁶ In my leave to appeal decision, I raised the possibility that the Claimant's employment relationship with the Employer might have ended before December 27, 2017. At the hearing before me, however, the Claimant and the Employer agreed that that was not the case.

⁷ GD10-9.

Ultimately, the Employer ended the call, noting that the Claimant had been abusive. Indeed, the Claimant emailed the Employer the following day to apologize for his behaviour.⁸

[18] The Claimant, on the other hand, says that he was desperate for work and would never have refused any reasonable assignment that the Employer had offered to him. He notes in particular that he supposedly refused an assignment that paid up to \$22/hour.⁹ The Claimant argues that the Employer had never before offered him an assignment at such a high rate of pay and that it is ridiculous to think that he would have refused that option if the Employer had truly offered it to him.

[19] In this case, therefore, the General Division had to decide between two competing versions of events. The General Division considered all of the relevant evidence. Ultimately, however, the General Division concluded that the Employer offered three alternative work assignments to the Claimant on December 27, 2017, and that he rejected them all. The General Division analyzed the evidence and explained why it preferred one version over the other.

[20] In the circumstances, therefore, I am unable to conclude that the General Division's finding was made in a perverse or capricious manner or without regard for the material that it had before it. As a result, I am unable to intervene in this case.

CONCLUSION

[21] The main question in this appeal was whether the Claimant voluntarily quit his job by refusing alternative work assignments that the Employer had offered to him. The General Division considered two competing versions of what happened during a telephone call between the Employer and the Claimant on December 27, 2017. Ultimately, however, it preferred the version put forward by the Employer. In my view, it was open to the General Division to arrive at that conclusion and it made no relevant error in doing so.

⁸ GD10-26.

⁹ GD10-63.

[22] I sympathize greatly with the Claimant's circumstances. However, I have not found any grounds on which to intervene in his case. As a result, I must dismiss his appeal.

Jude Samson
Member, Appeal Division

HEARD ON:	June 20, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. B., Appellant S. Prud'Homme, Representative for the Canada Employment Insurance Commission (written submissions only) A. M., Representative for X

Relevant Sections of the Law

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.

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...