



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation : *K. L. v Canada Employment Insurance Commission*, 2019 SST 1042

Tribunal File Number: AD-19-455

BETWEEN:

K. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: September 16, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] After working as a customer service representative for different contact centres for more than a couple of years, the Appellant, K. L. (Claimant), decided that he was not going to work at one again. But he needed a job, so he interviewed with a new contact centre. During the interview, he asked specific questions about the work environment. The company assured him that he would get all the training he needed and that the company's database would provide him with all the answers and resources to assist customers.

[3] The Claimant started working for the new company. He went through training and did everything he could to perform his job. However, the Claimant found that the training was inadequate and he learned that the database was virtually inoperable. His employer failed to provide him with sufficient tools, support and resources he required to perform his job and to assist customers. He was unable to get any help from his employer either.

[4] While working at this contact centre, the Claimant actively looked for other jobs because he did not even want to work at a contact centre in the first place, but he could not find anything. Finally, he left his job even though he had not found other work yet. He notes that his employer is no longer in business, so he would have been without work anyway.

[5] The Claimant applied for Employment Insurance regular benefits, but the Respondent, the Canada Employment Insurance Commission (Commission) denied his claim because it found that he had voluntarily left his employment without just cause.¹ The Commission did not change its mind on reconsideration.² The Claimant appealed the Commission's reconsideration decision to the General Division, which dismissed his appeal. The General Division found that the

¹ See Commission's letter dated January 25, 2019, at GD3-19 to GD3-20.

² See Commission's reconsideration decision dated March 8, 2019, at GD3-28 to GD3-29.

Claimant had voluntarily left his employment without just cause and that voluntarily leaving was not his only reasonable alternative.

[6] The Claimant is now appealing the General Division's decision. The Claimant argues that the General Division based its decision on an erroneous finding of fact without regard for the material before it by overlooking or misconstruing key pieces of evidence.

[7] I have to decide whether the General Division overlooked or misconstrued any of the evidence. I find that the General Division accurately set out the evidence but that it did not consider part of the Claimant's arguments. Even so, I find that just cause for voluntarily leaving his employment did not arise when the Claimant found that he had inadequate training and support. The appeal is dismissed.

PRELIMINARY MATTER

[8] In his Notice of Appeal, the Claimant argued that the General Division failed to observe a principle of natural justice by forcing him to proceed without legal representation. He had contacted the Social Security Tribunal and had asked whether it could refer him to anyone. The Tribunal provided him with a list of legal representatives, but there was no one listed from his province. He contacted the Tribunal two more times, but did not find a representative through the Tribunal. However, the Claimant advises that representation is no longer an issue and he is no longer pursuing this ground of appeal. Instead, he is now arguing that the General Division based its decision on an erroneous finding of fact that it made without regard for the material before it.

[9] The Claimant advises that he is ready to and wishes to act on his own behalf in this appeal without any representation. In light of the Claimant's position, there is no need for me to consider this issue but, as an aside, I would have found that the General Division did not breach any principles of natural justice. There is no evidence that the General Division member was at all aware that, at the time, the Claimant wanted to possibly adjourn the proceedings and seek legal representation. The Claimant did not raise the issue and was seemingly content to proceed with the hearing before the General Division.

ISSUE

[10] Did the General Division overlook or misconstrue any key pieces of evidence?

ANALYSIS

[11] The Appeal Division may intervene in a decision of the General Division only if it finds that the General Division made one of the types of errors described as a “ground of appeal” under subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA). The only three grounds of appeal are as follows:

- 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.

[12] The Claimant argues that the General Division made an error under subsection 58(1)(c) of the DESDA.

Did the General Division overlook or misconstrue any key pieces of evidence?

[13] No. I find that the General Division did not overlook or misconstrue any key pieces of evidence, but it misapprehended the Claimant’s reasons for leaving his employment.

[14] The Claimant argues that the General Division member is wrong because she largely focused on the Commission’s notes that said he was feeling stressed from his work. The member examined whether he left his employment because of anxiety and stress. He notes that he has medical problems now and like everyone else, he has stress from day-to-day, yet stress did not and does not bar him from working. He says that he is able to handle stress and did not need to see a doctor, so the General Division did not have to decide whether he had just cause to voluntarily leave his employment because of any medical issues.

[15] The Claimant argues that the Commission did not accurately record conversations with him, and, in turn, the General Division misinterpreted information in the hearing file.³ He argues that the General Division member failed to focus on the right information. In particular, he argues that the member should have focused on whether his employer provided adequate training, proper tools, and resources for him to do his job. He argues that he had just cause to voluntarily leave his employment because his employer did not properly train or equip him to do his job. He claims that he did everything that was reasonable to secure alternate employment before he left his job.

[16] At paragraph 16, the General Division noted that the Claimant told the Commission that he quit his job “because the job training was poor and did not prepare him to deal with inbound customer service issues.” At paragraph 17, the General Division noted that the Claimant also reported to the Commission that he spent three weeks training and that he worked for approximately another three weeks before leaving that position. He stated that the training was poor. He spoke with his manager but nothing really changed.

[17] The General Division also noted that when the Claimant requested a reconsideration, he told the Commission that he was unable to provide customer service because he did not have the proper training, support, or systems to do the job. He asked for help but his employer did not provide additional training. The employer told him that everyone was new and that he should do the best he could with what he had.

[18] At paragraphs 21 and 22, the General Division noted that the Claimant repeated much of what he had told the Commission: the training did not prepare him for the job. He frequently spoke with his managers and once to Human Resources, in an effort to improve the situation or get more training. He also reviewed all of the company training information that was available. He testified that his manager assured him that the situation would improve, but the Claimant knew that the job was not going to get better, so he quit his job at the contact centre.

[19] The General Division did not overlook or misconstrue evidence. The member accurately recorded the Claimant’s oral evidence. If anything, the General Division member might have

³ At approximately 10:30 of the General Division recording.

misapprehended the Claimant's argument that he voluntarily left his employment because of inadequate training and resources.

Does lack of training and having inadequate resources and support constitute just cause?

[20] No. I find that lack of training and having inadequate resources and support does not constitute just cause under the *Employment Insurance Act*.

[21] The General Division member considered whether inadequate training and resources could have made the Claimant overly stressed. The member did this because she examined whether the Claimant's working environment or his conditions constituted a danger to his health or safety. Unsafe working conditions could have served as the basis for just cause under subsection 29(c)(iv) of the *Employment Insurance Act*.

[22] However, the Claimant argued that he voluntarily left his employment in part because his employer failed to provide adequate training and resources, even though he spoke with his manager on a daily basis about his concerns. Despite the Claimant's arguments, the member did not explicitly examine whether just cause could exist if there was inadequate training or resources. Because this was one of his primary arguments, the General Division member should have directly addressed it. Even so, I would have come to the same outcome as the General Division.

[23] Subsection 29(c) of the *Employment Insurance Act* lists several circumstances where just cause may exist. On top of that, there has to be no reasonable alternative to leaving for just cause to exist. The list, while not exhaustive, does not include inadequate training or resources as possibly constituting just cause.

[24] Subsection 29(c)(xiv) also provides for just cause where "any other reasonable circumstances that are prescribed" exists. The prescribed circumstances for the purposes of subsection 29(c)(xiv) can be found in section 51.1 of the *Employment Insurance Regulations*, but the prescribed circumstances do not include inadequate training and resources.

[25] The circumstances that the Claimant describes do not fall into any of the class of circumstances listed in subsection 29(c) of the *Employment Insurance Act*. As such, I find that

the Claimant did not have just cause for voluntarily leaving his employment when he left because of inadequate training, support and resources.

CONCLUSION

[26] The appeal is dismissed.

Janet Lew
Member, Appeal Division

HEARD ON:	September 9, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. L., Appellant S. Prud'homme, Representative for the Respondent (by written submissions only)