



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. D. v Canada Employment Insurance Commission*, 2019 SST 1383

Tribunal File Number: AD-19-545

BETWEEN:

E. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: November 28, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed and the disqualification imposed under section 30 of the *Employment Insurance Act* is rescinded.

OVERVIEW

[2] The Appellant, E. D. (Claimant), appeals the General Division's decision. The General Division found that the Claimant quit his employment and that he had not proven that he had just cause for leaving his employment. It concluded that the Claimant was disqualified from receiving any Employment Insurance benefits. The Claimant argues that the General Division made several errors.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), claims that the General Division erred. I agree. I find that the General Division overlooked some of the evidence and failed to address some of the Claimant's arguments. I am therefore allowing the appeal and lifting the disqualification. This means that there is no disqualification against the Claimant.

PRELIMINARY MATTER

[4] Although the Commission recommended that the appeal be allowed, it was unclear whether the Claimant still wanted the hearing scheduled for December 18, 2019 to go ahead.

[5] I held a case management conference on November 26, 2019. Both parties attended (Angèle Fricker represented the Commission). The parties discussed whether the hearing scheduled for December 18, 2019 was necessary. The Commission had already recommended that the appeal be allowed. There were no other outstanding issues for the Appeal Division to address.

[6] The Claimant accepted that it was unnecessary for the hearing to go ahead. But, he wanted to determine when he could receive Employment Insurance regular benefits.

[7] Ms. Fricker explained that the Claimant still had to meet the requirements to be entitled to receive regular benefits. She provided information about what documents he could give to the Commission to support his claim for regular benefits. This information could include an updated medical certificate showing when he became capable of working, even if he continued to have limitations. This could also include a job search list to show when and where he had been looking for work.

ISSUES

[8] The issues are:

- (a) Did the General Division fail to consider any of the evidence?
- (b) Did the General Division fail to examine whether subsection 29(c)(iii) or (xi) of the *Employment Insurance Act* applied?

ANALYSIS

[9] The Claimant denies that he quit his job. He had medical restrictions. He claims that the company he worked at would no longer give him any modified work. He was of the view that because modified duties were unavailable, he was on an indefinite medical leave of absence. Indeed, the Claimant received Employment Insurance sickness benefits.

[10] The Commission accepts that the General Division erred.

[11] The Commission agrees with the Claimant that the General Division ignored evidence. In particular, it failed to address the Claimant's argument that if he left his employment, he had just cause because his employer discriminated against him by refusing to continue giving him modified duties, even though other employees were on modified duties during the same period.¹

[12] By ignoring this evidence and the Claimant's arguments, the General Division failed to examine whether he might have had just cause to leave his employment under subsection 29(c)(iii) of the *Employment Insurance Act* might have applied in the Claimant's circumstances.

¹ See GD2-9 to GD2-11.

[13] Under subsection 29(c)(iii) of the *Employment Insurance Act*, just cause for voluntarily leaving an employment exists if a claimant had no reasonable alternative to leaving, having regard to all the circumstances, including whether there is discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*.

[14] The Commission recommends that the Appeal Division allow the appeal and rescind the disqualification.

[15] I accept the Commission's arguments and recommendations. I am therefore allowing the appeal and rescinding the disqualification. This means that the Claimant may be entitled to receive Employment Insurance regular benefits, if he can satisfy the Commission that he was capable of working and that he was looking for work. The Commission encouraged the Claimant to provide supporting evidence that he was capable of working and that he was actively looking for work.

[16] The Commission argued that the General Division made other errors too. As I have already determined that it overlooked some of the evidence and arguments, and I have granted the appeal on this basis, I do not have to address these other issues.

CONCLUSION

[17] The appeal is allowed and the disqualification is rescinded. The hearing scheduled for December 18, 2019 is now cancelled.

Janet Lew
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	E. D., Appellant