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

Citation: *E. V. v Canada Employment Insurance Commission*, 2020 SST 46

Tribunal File Number: AD-19-521

BETWEEN:

E. V.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: January 22, 2020

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] E. V. is the Claimant in this case. She was hired to work as an accounting or data entry clerk, but says that her employer made significant changes to her duties and hours of work. She also said that her boss often yelled at her and falsely accused of her losing things.

[3] As a result, the Claimant left her job and later applied for Employment Insurance (EI) regular benefits. Her application for EI benefits was denied, however, because the Canada Employment Insurance Commission concluded that she had voluntarily left her job without just cause.[1]

[4] The Claimant challenged the initial decision, but the Commission maintained it on reconsideration. The Claimant then appealed the Commission's reconsideration decision to the Tribunal's General Division, but it dismissed her appeal. The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division.

[5] I have concluded that the General Division did not apply the law correctly in this case. As a result, I will give the decision that the General Division should have given: there is no reason to disqualify the Claimant from receiving EI benefits. These are the reasons for my decision.

ISSUES

[6] In reaching this decision, I focused on the following questions:

a) Did the General Division commit errors of law when deciding whether the Claimant had just cause for leaving her job?

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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 powers to disqualify claimants from receiving EI benefits.

b) If so, how should I fix the General Division's error?

c) Is the Claimant disqualified from receiving EI benefits?

ANALYSIS

[7] I must follow the law and procedures set out in the *Department of Employment and Social Development Act* (DESD Act). As a result, I can intervene in this case only if the General Division committed one or more of the errors listed under section 58(1) of the DESD Act.[2]

[8] In this case, I focused on whether the General Division decision contains an error of law.[3] Based on the wording of the DESD Act, any error of law could allow me to set aside or modify the General Division decision.[4]

[9] If the General Division did commit an error, then the DESD Act also defines my powers to try to fix that error.[5]

Issue 1: Did the General Division commit errors of law when deciding whether the Claimant had just cause for leaving her job?

[10] Yes, the General Division's analysis is incomplete and contains errors of law.

[11] The Commission based its decision on section 30 of the *Employment Insurance Act* (EI Act). That provision disqualifies the Claimant from receiving EI benefits if she voluntarily left a job without just cause. There is no question in this case that the Claimant walked away from her job. Instead, the General Division focused on whether she had just cause for leaving her job when she did.

[12] Proving just cause can be difficult. The Claimant had to establish that, given all the circumstances of her case, she had no reasonable alternative but to quit.[6] Section 29(c) of the

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[2] These errors are also known as grounds of appeal.
[3] Section 58(1)(b) of the DESD Act says that I can intervene in a case whenever the General Division errs in law in making its decision, whether or not the error appears on the face of the record.
[4] *Canada (Attorney General) v Jean*, 2015 FCA 242 at para 19.
[5] These powers are established in section 59(1) of the DESD Act.
[6] *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

EI Act lists several relevant circumstances that the Tribunal should consider in cases like this one, but it must consider other relevant circumstances too.

[13] In its decision, the General Division summarized the reasons why the Claimant felt the need to leave her job. In particular, there was a change to her hours of work and to the scope of her duties, her boss was yelling at her all the time, and her place of work was too far from her home. The General Division also listed the reasonable alternatives that, in the Commission's submission, the Claimant should have pursued before quitting her job.

[14] The General Division then concluded as follows, in paragraph 11 of its decision.

> After considering the evidence submitted by both parties, I accept and assign more weight to the submissions of the [Commission]. I find that the [Claimant] did not show just cause when she left her employment. The reason is that the [Claimant] had reasonable alternatives. Reasonable alternatives to leaving would have been to speak with her employer and try to remedy the situation, to seek other employment options and secure another employment better suited to her needs, and/or to take a medical leave. The [Claimant] made the personal choice to leave her employment.

[15] This paragraph troubles me because the Tribunal normally assigns weight to the evidence and not to submissions. In addition, the General Division did not analyze the evidence in a meaningful way.[7] For example, it did not decide whether any of the main allegations made by the Claimant were true.[8] Instead it skipped straight to the reasonable alternatives analysis.

[16] By skipping to the reasonable alternatives analysis, the General Division committed an error of law under section 58(1)(b) of the DESD Act. The Appeal Division has stressed the need to consider all the reasons why a person left their job and to consider those reasons together, whether listed under section 29(c) of the EI Act or not.[9]

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[7] The General Division's obligation to meaningfully analyze the evidence is discussed in cases such as *Canada (Minister of Human Resources Development) v Quesnelle*, 2003 FCA 92 at paras 8-9;
[8] Although it did not strike me as one of the Claimant's main arguments, the General Division did consider the Claimant's complaint regarding the distance between her home and place of work. On this question, the General Division seems to have relied on evidence from the Internet, but ignored the evidence of the Claimant and of her husband concerning traffic conditions and of how the General Division's information might have been inaccurate because the employer had two locations.
[9] *SM v Canada Employment Insurance Commission*, 2019 SST 499 at para 12; *SW v Canada Employment Insurance Commission*, 2017 SSTADEI 437 at paras 37-46.

[17] In addition, the courts have specifically said that the Tribunal should decide allegations of harassment before considering the applicant's reasonable alternatives.[10] The reasoning in those cases applies to other circumstances too: the Tribunal must understand the surrounding circumstances before the reasonableness of a particular alternative can be assessed.

[18] Given the General Division's failure to apply the law correctly, I have the power to intervene in this case.

Issue 2: How should I fix the General Division's error?

[19] In this case, I have decided to give the decision that the General Division should have given.

[20] I have the ability and the information needed to make a final decision in this case.[11] In addition, I have reviewed all the material in the file and listened to the recording of the General Division hearing. As a result, I see little benefit in returning the matter to the General Division.

Issue 3: Is the Claimant disqualified from receiving EI benefits?

[21] No, there is no reason to disqualify the Claimant from receiving EI benefits.

[22] At the General Division hearing, the Claimant explained that she was hired to work in an accounts payable or data entry type position. She understood that she would be working from 9:00 a.m. to 5:00 p.m., Monday to Friday. However, in the short time that the Claimant worked for the employer, she said that her work hours changed, her duties changed, and that her work environment deteriorated.[12]

[23] More specifically, the Claimant said that she was sometimes asked to work from 6:00 a.m. to 6:00 p.m., though that was difficult for her because of her commuting options. She was sometimes asked to work on Saturdays too. Concerning the Claimant's duties, the Claimant

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[10] *Bell v Canada (Attorney General)*, A-450-95; *Mcfarlane v Canada*, 1997 CanLII 5163 (FCA).
[11] Section 59(1) of the DESD Act establishes my power to give the decision that the General Division should have given. See also section 64(1) of the DESD Act and the Federal Court of Appeal's decision in *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paras 16–18.
[12] In addition to the Claimant's evidence at the General Division hearing, she also had phone conversations with Commission staff. Records of those conversations appear at pages GD3-16 to 18 and GD3-23.

said that her employer had asked to do increasingly detailed and complex tasks. Indeed, the Claimant and her employer seem to agree that she was struggling to complete her work properly.

[24] Not surprisingly, the Claimant and her employer disagree on issues surrounding her work environment. The Claimant alleges that her boss was always yelling at her. And on the Claimant's last day, her boss was yelling and falsely accusing her of misplacing a folder. After her boss found the folder on her desk, the Claimant said that she was quitting and went to her car to cry. The Claimant says that she had to leave her job because of all the stress and anxiety that it was causing.

[25] The Commission contacted the Claimant's employer by phone and made notes of that conversation.[13] The Claimant's former boss said that:

a) she never yells at staff;

b) the Claimant was struggling with some tasks that had been assigned to her. As a result, she was patiently trying to provide the Claimant with the additional training that she needed; and

c) the Claimant had only given vague reasons for leaving the company. Her former employer figured that it was because she was struggling to grasp the work.

[26] Where the evidence of the Claimant and of her former boss contradict, I give more weight to the Claimant's evidence. First, the Commission did not participate in the General Division hearing. The notes of a telephone conversation with the Claimant's former boss is the only evidence the Commission presented to contradict the Claimant's story.[14] But the Claimant had no opportunity to test that evidence. Besides, it is not surprising that the Claimant's former boss would paint a rosy picture of her workplace and deny shouting at employees.

[27] And second, the Claimant's former boss was only asked questions about the work environment. She was not asked about changes to the Claimant's duties and hours of work.

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[13] GD3-24 to 25.
[14] GD3-24 to 25.

[28] In the circumstances, I am satisfied that the Claimant has proven that the employer imposed changes to her duties and hours of work. The Claimant did not anticipate these changes when she started in the position and they amount to relevant circumstances under section 29(c) of the EI Act.[15]

[29] In addition, the Claimant had no reasonable alternatives to leaving her job when she did. These alternatives normally require that applicants try to resolve conflicts with their employers and make efforts at finding a new job before leaving the old one.[16]

[30] In this case, the Claimant did raise her concerns with the employer, but that attempt was unsuccessful. Instead, the employer told the Claimant to quit, and that they could find someone else to do her job.

[31] However, waiting to find another job was not a reasonable alternative in this case. I came to this conclusion based on the Claimant's difficult work environment, and the fact that she was struggling with important changes to her work duties. This is not the case of a large employer with a formal dispute resolution process. Nor is it the case of a person who was simply dissatisfied with her working conditions. Instead, this is more similar to the case of a person who was hired for one position, then asked to do something completely different.[17]

[32] Overall, therefore, I am satisfied that the Claimant had no reasonable alternative to leaving her job when she did.[18]

CONCLUSION

[33] In this case, the General Division committed errors of law. In particular, it failed to meaningfully analyze the evidence and failed to consider the surrounding circumstances before conducting its reasonable alternatives analysis.

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[15] See, for example, section 29(c)(ix) of the EI Act: significant changes in work duties.
[16] *Canada (Attorney General) v White*, 2011 FCA 190 at para 5.
[17] For a similar case, see *DS v Canada Employment Insurance Commission*, 2019 SST 400.
[18] I recognize that the General Division found that taking medical leave was an additional reasonable alternative available to the Claimant. However, the evidence on which that finding was based is unclear. Indeed, the Claimant explained that she did not think that that option was available to her because she was a contract worker: audio recording of General Division hearing at approximately 24:00.

[34] As a result, I was able to intervene in this case and decided to give the decision that the General Division should have given. Briefly, the Claimant had just cause for leaving her job: this is not a valid reason to disqualify the Claimant from receiving EI benefits.

Jude Samson
Member, Appeal Division

HEARD ON:	December 11, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Angèle Fricker, Representative for the Respondent