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

Citation: *S. F. v Canada Employment Insurance Commission*, 2020 SST 245

[TRANSLATION]

Tribunal File Number: AD-19-812

BETWEEN:

S. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 19, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, S. F. (Claimant), made an initial claim for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), informed him that he was not entitled to Employment Insurance benefits because he had voluntarily left his employment without just cause. The Commission determined that the Claimant had failed to show he had exhausted all reasonable alternatives before leaving his employment.

[3] The Claimant requested a reconsideration of that decision on the ground that he had just cause for leaving his employment since his working conditions were a danger to his safety and that of others and adversely affected his health. The Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division determined that the Claimant did not have just cause for voluntarily leaving his employment due to the tasks he had to perform because they were part of the employment he had accepted. It also determined that the Claimant failed to show that his working conditions could be dangerous and that they posed a safety risk. It found that there was insufficient evidence of the adverse effect on the Claimant's health. The General Division found that the Claimant did not have just cause for leaving his employment because it was not the only reasonable alternative in his situation.

[5] The Claimant obtained leave to appeal the General Division decision. He submits that the General Division disregarded the evidence before it. He argues that the General Division made an error in law by requiring him to produce medical evidence in support of his leaving. He also submits that the General Division made an error in its interpretation of section 29(c) of the *Employment Insurance Act* (EI Act).

[6] The Tribunal must decide whether the General Division failed to observe a principle of natural justice and whether it made an error by requiring a medical certificate to justify the Claimant's leaving. It must also decide whether the General Division overlooked the evidence before it and whether it made an error in its interpretation of section 29(c) of the EI Act.

[7] The Tribunal dismisses the Claimant's appeal.

ISSUES

[8] Did the General Division fail to observe a principle of natural justice by giving greater weight to the employer's evidence even though it did not attend the hearing and could not be cross-examined?

[9] Did the General Division make an error in law by requiring a medical certificate to justify the Claimant's leaving?

[10] Did the General Division make an error by overlooking certain evidence and in its interpretation of section 29(c)(iv) and (xi) of the EI Act?

[11] Did the General Division make an error by overlooking certain evidence and in its interpretation of section 29(c)(vi) of the EI Act?

ANALYSIS

Appeal Division's Mandate

[12] The Federal Court of Appeal has established that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).[1]

[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[13] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[14] Therefore, unless the General Division failed to observe a principle of natural justice, made an error in law, or 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, the Tribunal must dismiss the appeal.

Issue 1: Did the General Division fail to observe a principle of natural justice by giving greater weight to the employer's evidence event though it did not attend the hearing and could not be cross-examined?

[15] The Tribunal is of the view that this ground of appeal is without merit.

[16] The Claimant accuses the General Division of giving more weight to the employer's evidence even though it did not attend the hearing and he could not cross-examine it. He argues that the General Division should have favoured his direct testimony.

[17] The Tribunal is of the view that the mere fact that one party attends the hearing and the other does not must not be a determining factor. The General Division is free to prefer the credibility of one or the other.

[18] Furthermore, the Federal Court of Appeal decided that boards of referees (now the General Division) are not bound by the strict rules of evidence applicable in criminal or civil courts and they may receive and accept hearsay evidence.[2] Therefore, the General Division could not reject the employer's evidence simply because the Claimant had not had the opportunity to cross-examine the employer.[3]

[19] The Tribunal is of the view that the Claimant was aware of the evidence on file before he appeared before the General Division and that he had ample time to prepare his

[2] *Caron v Canada (Attorney General)*, 2003 FCA 254.
[3] *Olivier*, A-308-81.

defence. The General Division allowed him to present his arguments about the entire matter before it, and the Claimant had the opportunity to contradict the employer's position. There was no failure to observe a principle of natural justice.

[20] This ground of appeal is dismissed.

Issues 2 and 3:

Did the General Division make an error in law by requiring a medical certificate to justify the Claimant's leaving?

Did the General Division make an error by overlooking certain evidence and in its interpretation of section 29(c)(iv) and (xi) of the EI Act?

[21] The Tribunal is of the view that these grounds of appeal are without merit.

[22] The issue before the General Division was to determine whether the Claimant had voluntarily left his employment without just cause in accordance with sections 29 and 30 of the EI Act.

[23] The General Division had to determine whether the Claimant had just cause for leaving his employment by considering the existing facts at the time of his voluntary leaving on March 20, 2019.

[24] Based on the Claimant's statements, the General Division found that his decision to voluntarily leave his employment was related to the employer's refusal to give him two days off to go snowmobiling.

[25] The undisputed evidence shows that the Claimant asked the employer for two consecutive days off to go snowmobiling. The employer refused. The Claimant wanted to quit immediately. The employer asked him to stay for another two weeks while it found a replacement. The Claimant then submitted a letter of resignation to the employer, indicating that he would stop working two weeks later, on March 20, 2019.

[26] The Claimant himself admitted in a statement to the Commission that he had left his employment by personal choice because the employer had refused him two days off to

go snowmobiling.[4] He also told the Commission that he was fed up and that he no longer liked his job.[5] His goal was to not work more than 30 hours or 3–4 days a week during the winter so he could go snowmobiling.[6]

[27] The General Division clearly did not believe the Claimant's testimony that he had left his employment because his working conditions were a danger to his health or safety and that the employer's practices were contrary to the law.

[28] The General Division determined that the Claimant did not have just cause for leaving his employment due to the tasks he had to perform since they were part of the job he had accepted. It noted that these conditions had been communicated to him when he was hired. The Claimant knew that he would be called to work various shifts or that he would have to work long days. He accepted the employment with full knowledge of the facts. He had always done what the employer had assigned him since he was hired.

[29] The General Division did not give weight to the Claimant's statements that he had reached a verbal agreement with the employer to work fewer hours or fewer days a week over the winter and that his work schedule would be reduced as a result. The Claimant said that the employer did not agree with reducing his work hours. Furthermore, the hours the Claimant accepted and worked do not support his claim that there was such an agreement with the employer. The employment contract agreed on by the parties does not mention this amendment to the agreement at all.

[30] Furthermore, the preponderant evidence does not show that the Claimant discussed with his employer the dangerous nature of his working conditions or his health problems before leaving his job. As decided by the General Division, the evidence instead shows that the Claimant asked for time off and to reduce his hours to have more free time during the winter. The employer confirmed that the Claimant wanted time off but that he had not discussed his working conditions or his health.

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[4] GD3-51 and GD3-52.
[5] GD3-48.
[6] GD3-51.

[31] The Claimant argues that the General Division made an error by requiring a doctor's note to leave his employment, given the state of his health. The General Division acknowledged in its decision that a medical certificate was not always necessary. However, it found from the evidence that the Claimant's work circumstances had not caused health problems that were serious enough to justify his leaving.

[32] Furthermore, the Federal Court of Appeal established that a claimant who claims to have left their employment for health reasons must also prove that they looked for other employment before leaving the one they had,[7] which the Claimant did not do.[8]

[33] The preponderant evidence also does not support the Claimant's claim that the employer had illegal practices. The employer said it had given the Claimant one day a week in accordance with the requirements of the *Act respecting labour standards*. It provided the dates on which the Claimant took leave as of the week of December 30, 2019. Furthermore, the Claimant never worked a 70-hour workweek for seven consecutive days justifying a 36-hour period of rest under the rules set out by the Société de l'assurance automobile du Québec [Québec's automobile insurance corporation].

[34] The Claimant himself acknowledged in an earlier statement to the Commission that the employer's working conditions were demanding but not illegal.[9]

[35] For the reasons mentioned above, there is no ground raised by the Claimant justifying the Tribunal's intervention.

Issue 4: Did the General Division make an error in its interpretation of section 29(c)(vi) of the EI Act?

[36] This ground of appeal is without merit.

[37] The Claimant left a permanent, full-time job for another seasonal, very short-term job. As a result, he created an unjustified certainty of unemployment.

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[7] *Her Majesty the Queen v Dietrich*, FCA, A-640-93.
[8] GD3-16.
[9] GD3-29.

[38] As concluded by the General Division, the Claimant did not show that he had reasonable assurance of another employment in the immediate future within the meaning of section 29(c)(vi) of the EI Act.[10]

CONCLUSION

[39] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division

HEARD ON :	March 13, 2020
METHOD OF PROCEEDING :	Teleconference
APPEARANCES:	S. F., Appellant Roxanne Bisson, Representative for the Appellant Melanie Allen, Representative for the Respondent

[10] *Canada (Attorney General) v Langlois*, 2008 FCA 18.