



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. G. v Canada Employment Insurance Commission and X*, 2020 SST 267

Tribunal File Number: AD-20-23

BETWEEN:

M. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: March 30, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed and the matter is returned to the General Division.

OVERVIEW

[2] The Appellant, M. G. (Claimant), is appealing the General Division's decision. The General Division decided that the Claimant was disqualified from receiving Employment Insurance benefits because it found that he had reasonable alternatives to leaving his job as a truck driver for the Added Party, X (Employer).

[3] The Claimant argues that the General Division erred in its decision because it overlooked several key facts. He argues that if the General Division had not overlooked these facts, it would have accepted that he did not have any reasonable alternatives but to leave his job. He argues that he therefore had just cause for having left his job. The Respondent the Canada Employment Insurance Commission (Commission) agrees that the General Division might have based its decision on an error of fact without regard for the material before it.

[4] The Commission requests that the Appeal Division send the matter back to the General Division for a reconsideration. The Commission notes that not only is the audio recording of the General Division hearing unavailable, but the General Division's assessment of the facts also appears to be inadequate. I agree that returning this matter to the General Division is the appropriate remedy. Therefore, I am allowing the appeal and returning this matter to the General Division for a reassessment.

ISSUE

[5] The only issue is whether the General Division overlooked any key facts regarding the Claimant's reason for having left his job.

ANALYSIS

[6] If the General Division overlooked any key facts regarding the Claimant's reason for having left his job, then I must allow the appeal.

The Employer's evidence

[7] The Claimant states that he left his job because he was concerned about safety issues involving the truck that he drove for the Employer. The Claimant states that he raised concerns with the Employer but, for the most part, the Employer ignored them. For instance, he claims that he complained that the brakes continued to be unsafe. The Claimant grew increasingly concerned for his safety. Finally, he felt that he could no longer continue driving for his Employer. On top of that, the Claimant alleged that his Employer had been pressuring him to drive faster than he felt was safe.

[8] The Employer denied the Claimant's allegations. The owner testified that the company's fleet of trucks were safe to drive. As I noted in my leave to appeal decision, the owner denied that the Claimant ever raised any safety concerns. Yet, at the same time, the owner testified that he immediately arranged for any maintenance for the vehicle once the Claimant brought it to his attention.¹ This represented a seeming inconsistency in the owner's statements, which the General Division did not appear to appreciate or address. If, as the owner claims, the Claimant never raised any safety concerns, the owner cannot claim at the same time that he always addressed whatever safety concerns the Claimant raised.

[9] Despite the Employer's conflicting evidence on a central issue, the General Division found the Employer's evidence credible. Having found the owner credible, the General Division preferred the Employer's evidence.

[10] Given the seeming inconsistency in the owner's evidence, the General Division based its decision on a perverse finding that the owner was necessarily credible. If the General Division had been alive to the seeming inconsistency in the owner's statement, it may have come to an entirely different conclusion regarding the owner's credibility.

The Claimant's evidence

[11] On the other hand, the General Division found what it described as inconsistencies in the Claimant's evidence. For instance, it found that the Claimant had a "new version of events"

¹ See General Division decision at para. 16.

regarding the safety history of one of the Employer's vehicles. The General Division found that the Claimant initially stated that his employer took the truck to a mechanic because of problems with the brakes. However, there were limitations as to what could be fixed because of the age of the vehicle. The Claimant stated that the issues remained unresolved and that they continued.

[12] The General Division found that the Claimant changed his mind and admitted that the brakes on the vehicle were in fact new. He also testified that he doubted that anyone fixed the brakes properly. The General Division found that this "new version of events" cast doubt on the Claimant's allegations against his employer, as it represented a "serious deviation from his earlier evidence to the Commission."²

[13] I do not see any documentary evidence in the hearing file that the Claimant had ever suggested that the brakes were old and that the employer had never replaced them, as the General Division suggested. In addition, although the General Division found that the Claimant had a "new version of events," there was evidence that the Claimant had in fact confirmed that the owner brought the truck to a mechanic, but that there were limitations with what a mechanic could do because of the vehicle's age. For the Claimant, the issues remained unresolved and continued. He still had safety concerns.³ The documentary evidence alone does not support the General Division's findings that the Claimant had a "new version of events" or that there was a "serious deviation from his earlier evidence to the Commission."

[14] As the Commission points out, unfortunately, the audio recording of the General Division hearing is unavailable for me to verify what testimony the Claimant might have given on these points.

[15] I find that the General Division overlooked or mischaracterized the evidence of both the Claimant and the Employer. For this reason, I am allowing the appeal.

Added Party's submissions

[16] The Added Party filed submissions on March 23, 2020, which consisted of a letter and two invoices for automotive repairs. They are not relevant to the issues before me because they

² See General Division decision at para. 23.

³ See Commission's interview with Claimant, dated October 8, 2019, at GD3-34 to GD3-35.

do not address the Claimant's arguments that the General Division overlooked key pieces of evidence.

Remedy

[17] The *Department of Employment and Social Development Act* gives me the power to give the decision that the General Division should have given. However, the Appeal Division should not intervene nor give a decision in this case. Apart from the incomplete audio recording of the General Division hearing, there are inconsistencies in the record and obvious gaps in the evidence. There may also be incomplete maintenance records of the truck. There may also be additional witnesses that can attest to the condition of the truck.

[18] Because of the inconsistencies and gaps in the evidence, it is not possible to properly assess whether the Claimant had just cause for having left his employment. It is appropriate to return this matter to the General Division for a full reassessment.

[19] The Added Party will have an opportunity to address any issues it raised in its recent letter.

CONCLUSION

[20] The appeal is allowed and the matter is returned to the General Division for a full reassessment.

Janet Lew
Member, Appeal Division

HEARD ON:	
METHOD OF PROCEEDING: ⁴	On the Record
APPEARANCES:	M. G., Appellant Melanie Allen, Representative for the Respondent D. B., Representative for the Added party

⁴ This matter was originally scheduled to be heard by teleconference but in light of the Commission's representations of March 11, 2020, the Appeal Division decided that a hearing was unnecessary.