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

Citation: *FT v Canada Employment Insurance Commission*, 2020 SST 1082

Tribunal File Number: AD-20-755

BETWEEN:

F. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: December 23, 2020

Canada

DECISION AND REASONS

DECISION

[1] I am dismissing the appeal.

[2] I have found that the General Division made an error of law in its decision. However, I have corrected that error. I have made the decision that the General Division should have made, but this does not change the result.

OVERVIEW

[3] The Appellant, F. T. (Claimant), applied for Employment Insurance benefits after she left her job on February 4, 2020. She claimed that the stress of her job had been affecting her health. The Respondent, the Canada Employment Insurance Commission (Commission), told her that it could not pay her benefits because she had reasonable alternatives to quitting. When the Claimant asked the Commission to reconsider, it refused to change this part of its decision.

[4] The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal, but the General Division dismissed her appeal. She is now appealing to the Appeal Division.

[5] The appeal is dismissed. The General Division made an error of law. It failed to consider all of the circumstances when it found that the Claimant had reasonable alternatives to leaving. The General Division did not analyze whether the Claimant's working conditions were a danger to her health or safety. I corrected this error and considered all of the relevant circumstances. But I have still found that she had reasonable alternatives to leaving her employment.

PRELIMINARY MATTERS

Claimant was not at the Appeal Division Hearing

[6] The Claimant did not participate in the Appeal Division teleconference hearing.

[7] The teleconference started at the appointed time. A Commission representative was on the line, but the Claimant did not join the call. I waited for 30 minutes to start the hearing. While

I was waiting, I asked the Appeal Division registry to try to contact the Claimant and help her to connect to the hearing. A registry officer called the Claimant multiple times and left four messages on her answering machine but was unable to speak directly to the Claimant.

[8] I was satisfied that the Claimant had proper notice of the hearing. On October 21, 2020, the Appeal Division emailed the Claimant a revised notice of hearing with instructions on how to join the teleconference hearing. An Appeal Division registry officer spoke with the Claimant on October 27, 2020, and confirmed that she had received the revised notice of hearing. The registry officer also reminded her of the time and date of the hearing. The registry left voice mail messages for the Claimant on December 8, 2020, and December 14, 2020, to remind her of the hearing.

[9] I proceeded in the Claimant's absence, in accordance with section 12(1) of the *Social Security Tribunal Regulations*.

New Evidence

[10] I acknowledge the Claimant's submissions dated December 9, 2020, and received on December 9, 2020. The Claimant has provided some additional details in her submissions that are not found in the General Division appeal record.

[11] The Federal Court of Appeal has repeatedly confirmed that the Appeal Division may not consider new evidence.[1] To the extent that the Claimant's submissions refer to additional evidence, I will not be considering that evidence.

WHAT GROUNDS CAN I CONSIDER FOR THIS APPEAL?

[12] "Grounds of appeal" are the reasons for the appeal. To allow the appeal, I must find that the General Division made one of these types of errors:[2]

1. The General Division hearing process was not fair in some way.

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[1] *Parchment v Canada (Attorney General)*, 2017 FC 354; *Marcia v Canada (Attorney General)*, 2016 FC 1367.
[2] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

ISSUE

[13] Did the General Division make an error of law by failing to consider whether the Claimant's working conditions were a danger to her health or safety?

ANALYSIS

[14] The law says that a claimant who voluntarily leaves his or her employment without just cause is disqualified from receiving benefits.[3] To show "just cause" for leaving, a claimant must show that there was no reasonable alternative to leaving, when all of the claimant's circumstances are considered.[4] The law lists a number of circumstances that must be considered where they are present.[5]

[15] One of the listed circumstances is "working conditions that constitute a danger to health or safety."[6] The General Division made an error of law because it did not analyze whether this circumstance applied.

[16] The General Division was aware that the Claimant had reported severe headaches, neck pain, and "extra-high" blood pressure.[7] The Claimant also told the General Division that she had been to the Emergency department for her symptoms in December 2019, where they did a CT scan and blood work. She also had a (heart) stress test. She said that her doctor had told her to take three days off work. The General Division understood that the Claimant attributed her symptoms to stress from extra work.

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[3] Section 30(1) of the *Employment Insurance Act* (EI Act).
[4] Section 29(c) of the EI Act.
[5] Sections 29(c)(i) to (xiv) of the EI Act.
[6] Section 29(c)(iv) of the EI Act.
[7] General Division decision, para 16; GD2-4.

[17] However, the General Division took note of these facts only when it considered whether the Claimant's employer was requiring her to work an excessive amount of overtime. The General Division did not analyze whether the excessive overtime, or any of the Claimant's other work circumstances, caused or contributed to her symptoms. It made no finding about whether the Claimant's working conditions presented a danger to her health or safety.

[18] As a result, it did not consider whether the Claimant had reasonable alternatives to leaving having regard to how her working conditions may have affected her health. The *Employment Insurance Act* (EI Act) specifies that "working conditions that constitute a danger to health or safety" is a relevant circumstance. There was evidence that the Claimant's working conditions may have had some negative effect on her health, so the General Division was at least required to consider whether this circumstance applied.

[19] I have found that the General Division made an error of law. Because I have found an error, I must decide what to do about it.

REMEDY

Nature of Remedy

[20] I have the authority to change the General Division decision or make the decision that the General Division should have made.[8] I could also send the matter back to the General Division for it to reconsider its decision.

[21] The Commission supports the Claimant's appeal to the Appeal Division. It submits that the General Division made an error of law by not considering whether the Claimant's working conditions were a danger to her health or safety. In addition, the Commission submits that I should return the matter to the General Division so that it might reconsider its decision. The Commission suggests that the record is not complete because the General Division made its decision without hearing the Claimant's testimony.

[22] I disagree. In my view, the record is complete. The Claimant made it clear that she believed the job was affecting her health and that this was a significant factor in her decision to

[8] My authority is set out in sections 59(1) and 64(1) of the DESD Act.

leave. In her notice of appeal to the General Division, she said that she "stayed [in the job] and fought until it was either the job or [her] health."[9] In support of that claim, the Claimant submitted evidence about what her employer expected her to do at work and about the effect of her work on her health.[10] There was evidence before the General Division on which it could have decided whether the Claimant's work conditions affected her health or safety.

[23] I cannot find that the record is incomplete just because the Claimant could possibly strengthen her argument with additional evidence about the effect of her work on her health. The Claimant had an opportunity to do all of this in her appeal to the General Division, but she did not attend the hearing. She had notice of that hearing but she has not explained why she failed to appear. The Claimant has not argued that the General Division failed to give her an adequate opportunity to be heard.

[24] I will make the decision that the General Division should have made.

Decision on the Merits

[25] The Claimant did not dispute that she voluntarily left her employment in her appeal to the General Division, and I have found no error in that part of the General Division decision. I confirm that the Claimant voluntarily left her employment.

[26] The Claimant's appeal is about whether she had just cause for leaving. I must find that she had no reasonable alternative to leaving before I can accept that she had just cause. I must consider all of the circumstances when I am assessing whether she had any reasonable alternative to leaving.[11] I have already found that the General Division did not consider all of the circumstances. In the next paragraphs, I will consider those circumstances whose presence is suggested by the evidence.

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[9] GD2-4.
[10] GD2-4; GD3-29, 35, and 37.
[11] EI Act, section 29(c).

Relevant work circumstances

- Excessive hours of overtime

[27] I have not found any important error of fact in the General Division's decision and I have no reason to interfere with its findings of fact. As a result, I accept that the Claimant worked the hours of overtime that she claimed, and I accept the General Division's finding that her hours of overtime were excessive. The EI Act identifies excessive overtime work as a relevant circumstance.[12] This is one of the circumstances that I will have to consider.

- Danger to health or safety

[28] The Claimant's evidence raises the question of whether her work conditions were such that they were also a "danger to [her] health or safety."[13] If I find that this was the case, then I would have to consider this circumstance together with her excessive overtime and any other relevant circumstances.

[29] The Claimant told the Commission that she has high blood pressure. She said that she began to experience severe headaches and saw her doctor in November 2019. According to the Claimant, her high blood pressure was "extra-high," which her doctor related to stress. On the doctor's recommendation, the Claimant took three days off work, from December 16 to December 18, 2019.[14] The Claimant also went to the Emergency department in December 2019 because of excruciating neck pain. She had a CT scan and blood tests. Later, she had a heart stress test. The tests did not find any physical cause for her symptoms.

[30] The Claimant took two weeks' vacation around Christmas 2019. When she returned from vacation, she found that her work had piled up because it was not being done in her absence. The employer fired the Claimant's "understudy" in mid-January and expected the Claimant to take on his work as well.[15] She said her employer had a new system and new policies and that there was

[12] EI Act, section 29(c)(viii).
[13] EI Act, section 29(c)(iv).
[14] GD3-38.
[15] GD3-39.

a high turnover of employees.[16] The Claimant's last day was February 4, 2020, but she had given notice two weeks earlier.

[31] I am satisfied that the Claimant's workload was high and that this was generally stressful to her. I also accept that her workload increased when she had to catch up on a backlog of work and take on work of her understudy. I do not doubt that the stress of her work contributed to the symptoms she experienced.

[32] At the same time, there is insufficient evidence for me to find that her work conditions were a danger to her health or safety. Her doctor apparently related her high blood pressure to stress. However, there is no evidence that the doctor knew anything about the nature of her work or work pressures, or that he understood her work demands to be particularly stressful. According to the Claimant, the doctor suggested that she take three days off because her blood pressure was unusually elevated, but there is no evidence that he told her she should quit her job for the sake of her health.

[33] The Claimant has not established that her work conditions represent a danger to her health or safety.

- Significant change in work duties

[34] "Significant changes in work duties," would be a relevant circumstance.[17] However, there is insufficient evidence that any changes to the Claimant's work duties were significant.

[35] The Claimant provided few details of changes. She said that the employer had new systems and policies. She said that the employer fired her understudy and added the understudy's work to her own.

[36] I do not know when the employer brought in all of these changes and I cannot determine how much they affected the Claimant. The systems and policies may have been confusing or created obstacles but they may also have resulted in simpler or more streamlined processes. I have no way to know how much the understudy's work added to the Claimant's existing

[16] GD2-4.
[17] EI Act, section 29(c)(ix).

workload, whether the Claimant's job ordinarily required her to pick up the work of others, or whether this was only a temporary or "one-off" situation.

[37] The Claimant has not shown that any of these changes represented a significant change in work duties.

- All the circumstances

[38] When I assess whether the Claimant had reasonable alternatives, I must consider all of the relevant circumstances together. This includes her excessive overtime, as I have said. I have found that it does not include a consideration that her work conditions constituted a danger to her health or safety. It does not include any significant changes in her work duties.

[39] However, I accept that the Claimant's pre-existing high blood pressure condition is a relevant circumstance, even though this is not one of the circumstances listed under section 29(c) of the EI Act. I accept that the Claimant believed her health was at risk, and I accept that her belief was reasonable in the circumstances.

[40] The Claimant identified stressors at her workplace. The employer placed significant demands on her that she could not meet within her regular workday. This resulted in the excessive overtime hours acknowledged by the General Division. She also experienced physical symptoms that she related to those stressors. She saw her doctor for headaches and reported that her blood pressure was "extra high" so her doctor gave her three days off work. She also went to the Emergency department because of severe neck pain, and the staff were concerned enough to order tests, including a CT scan. In addition, the Claimant had a heart stress test at some point after that. There is no evidence to the contrary on any of these facts, and I have no reason to disbelieve the Claimant.

[41] In light of her pre-existing medical condition, it was reasonable for the Claimant to consider quitting her job. The Claimant's job routinely required her to work extra hours and seemed to aggravate her high blood pressure condition.

Reasonable alternatives

[42] Even though it was reasonable for the Claimant to consider quitting, she still had reasonable alternatives to leaving her employment.

[43] The Claimant saw her doctor in November 2019 for symptoms that she relates to her work but she did not describe the nature of her work to her doctor. Her doctor did not recommend that she stop working or find other work. She later went to the Emergency Department in December 2019 and had other tests. The test results did not suggest a diagnosis or identify any particular cause for her symptoms.

[44] The Claimant said her manager was aware that she had health issues because she had taken three days off on her doctor's recommendation. However, there was no evidence that the employer was aware that the Claimant had a chronic health condition that could be triggered by stress or that its particular work demands aggravated the Claimant's symptoms or risked her health.

[45] The Claimant said that she returned from vacation to find that her work had piled up over her vacation. She said that it would have helped if her employer had done most of that work before she returned. She said she spoke to the Financial Controller about this and that the Controller said he was going to talk to the manager. The Claimant said, "[n]othing was done" in response to her concern. However, she also said that she normally reported directly to the manager.[18] She did not raise her concerns with her manager directly or ask the employer to reduce her hours or change her work duties.

[46] The Claimant had at least two reasonable alternatives to quitting. She could have returned to her doctor before she quit and asked for his opinion or recommendation. If she had described her work duties and pressures, her doctor might have recommended that she quit. He might also have offered her treatment options that would allow her to perform her work duties or he might have made recommendations on how the employer should accommodate her condition.

[18] GD3-39.

[47] The Claimant could also have spoken to her manager about her health issues, instead of to the Financial Controller. Or, she could have spoken to the manager directly when she did not hear back. She could have told her manager about the nature of her condition and about her need for rest, support from other employees, changes to her work duties, or a reduction in hours. If her doctor had identified what accommodations the Claimant would require to continue working in her job, she could have given her manager some idea of what he needed to do to help her.

[48] I appreciate that the Claimant believes that her employer was already aware of her workload concerns. She believes that her employer would have been unwilling to make changes to help her even if she had asked. Nevertheless, it would have been reasonable for her to bring her specific concerns to the attention of her own manager. She should have given her employer an opportunity to propose some kind of solution or accommodation before she quit her job.

[49] Because the Claimant did not exhaust all reasonable alternatives available to her before quitting, she did not have just cause for leaving her employment. That means that she does not qualify for regular Employment Insurance benefits.

CONCLUSION

[50] The appeal is dismissed.

Stephen Bergen
Member, Appeal Division

HEARD ON:	December 15, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	Susan Prud’homme, Representative for the Respondent