Citation: *BS v Canada Employment Insurance Commission*, 2022 SST 179

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	B. S.
Representative:	Robert Morrissey
Respondent:	Canada Employment Insurance Commission
Representative:	J. Lachance

Decision under appeal:	General Division decision dated August 16, 2021 (GE-21-637)

Tribunal member:	Melanie Petrunia
Type of hearing:	Teleconference
Hearing date:	January 5, 2022
Hearing participants:	Appellant Appellant's representative Respondent's representative
Decision date:	March 11, 2022
File number:	AD-21-301

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, B. S. (Claimant) stopped working in December 2020. He had an existing claim for regular employment insurance (EI) benefits at the time. When that claim finished, he made a new claim for EI benefits. In his new application for benefits, the Claimant said that he quit his job due to concerns about COVID-19.

[3] The Commission decided that the Claimant was not entitled to regular EI benefits because he did not have just cause for leaving his job. It also decided that he knowingly made a misrepresentation by not reporting that he stopped working on his claim report. The Commission imposed a penalty and a serious notice of violation. The Claimant asked the Commission to reconsider but it would not change its decision.

[4] The Claimant appealed to the Tribunal's General Division. The Claimant produced an amended Record of Employment (ROE) before the hearing which stated that there was a shortage of work. He argued that he did not voluntarily leave his job.

[5] The General Division allowed his claim in part. It reduced the penalty imposed by the Commission and found that a notice of violation should not be imposed. The General Division agreed with the Commission that the Claimant voluntarily left his job without just cause and dismissed that part of the appeal.

[6] The Claimant is now appealing the General Division decision that he voluntarily left his job without just cause to the Appeal Division. He argues that the General Division made an important error of fact by failing to consider the amended ROE, which shows that he was laid off because of a shortage of work.

[7] I find that the General Division did not err when it decided that the Claimant voluntarily left his job without just cause. This means that the appeal is dismissed.

Issues

[8] The issues in this appeal are:

a) Did the General Division base its decision on an important factual error by failing to consider the Claimant's amended ROE?

Analysis

[9] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:[1]

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

Background

[10] The Claimant was working out of province in late 2020. The work required him to be in close quarters with others and he became concerned about COVID-19. At one point he had had to test and self-isolate. The Claimant was concerned that he would contract COVID-19 and expose his elderly father. He lived with his father in his home province. [2]

[11] The Claimant stopped working on December 10, 2020 and returned to his home province. He was expecting to return to work in early January. When the employer did

[1] The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).
[2] General Division decision at para 20.

not contact him, he assumed that he had been laid off. He contacted the supervisor before applying for EI benefits and was told that there was no work.[3]

[12] The Claimant applied for EI benefits on January 6, 2021.[4] On his application for benefits, the Claimant said that he quit his job.[5] He explained that he did not feel safe at his job because of COVID-19.[6]

[13] The employer issued an ROE on December 17, 2020 which stated "Quit" as the reason for issuing.[7] The Commission decided that the Claimant voluntarily left his job without just cause. It also decided that he knowingly made a misrepresentation when he failed to report that he had stopped working. The Commission imposed a monetary penalty and a serious notice of violation on the Claimant.

– The General Division decision

[14] The employer issued an amended ROE on June 16, 2021 and it stated "Shortage of work/End of contract or season" as the reason for issuing.[8] This ROE was provided to the Tribunal before the hearing and relied upon by the Claimant.

[15] At the hearing before the General Division, the Claimant testified that he did not quit his job. He said that he left for the Christmas break and was not recalled in January.[9] The General Division found that the Claimant provided conflicting information about his reasons for leaving his job. It noted that his testimony at the hearing was contradicted by his statements in his application for benefits, his conversations with Service Canada agents, his request for reconsideration and his notice of appeal to the Tribunal.[10]

[16] The General Division reviewed the Claimant's reasons for quitting as stated in his application for benefits. The Claimant was concerned about COVID-19. He stated that

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[3] General Division decision at para 22.
[4] GD3A-28.
[5] GD3A-16.
[6] GD3A-20.
[7] GD3A-30.
[8] GD8-2
[9] General Division decision at para 22.
[10] General Division decision at para 25.

his employer told him that he could refuse unsafe work. He also stated that he had a guaranteed job offer beginning in May 2021.[11]

[17] The General Division noted that the employer issued an ROE on December 17, 2020, one week after the Claimant stopped working, which stated that he had quit.[12] The General Division also reviewed the notes from various conversations with Service Canada agents in which the Claimant stated that he left work because of concerns over COVID-19. He told one Service Canada agent that the worksite was shut down over the Christmas holidays.[13]

[18] In his request for reconsideration, the Claimant wrote that he did not expect the employer to write “quit” on his ROE. In his appeal to the Tribunal, the Claimant stated that he discussed his concerns with his supervisor and thought he was okay with the Claimant leaving. After he spoke with the supervisor, he found out that the superiors disagreed with him leaving and put ‘quit’ on his ROE.[14]

[19] In its decision, the General Division outlined the submissions of the Claimant’s representative that he did not leave because of COVID-19 but because it was the normal Christmas break. The General Division noted the amended ROE, which the representative said supported the Claimant’s position that he was laid off. It reviewed the evidence and found that it was the Claimant who initiated the separation from employment. The General Division found that the Claimant voluntarily left his job due to concerns about COVID-19.[15]

[20] The General Division also found that the Claimant did not have just cause for voluntarily leaving his job. It found that the Claimant had reasonable alternatives to leaving and could have asked the employer to address his concerns about safety at the workplace.[16]

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[11] General Division decision at para 26.
[12] General Division decision at para 29.
[13] General Division decision at para 35.
[14] GD2-5
[15] General Division decision at para 42.
[16] General Division decision at para 72.

– **The Claimant's appeal**

[21] The Claimant argues that the General Division made an important error of fact by not recognizing his amended ROE. He states that the amended ROE addresses the issue of voluntary leaving and shows that the Claimant left because of a shortage of work due to unpredictability caused by the pandemic.[17]

The General Division did not make an important error of fact

[22] The amended ROE was provided to the Tribunal and the Claimant relied on it at the hearing before the General Division. I need to determine whether the General Division ignored this evidence. If so, I will need to determine whether the decision was based on a finding of fact that ignored the evidence.[18] This means that I must find that the General Division's oversight could have affected its conclusion that the Claimant voluntarily left his job without just cause.

[23] The Federal Court of Appeal has confirmed that the Tribunal may generally be presumed to have considered the evidence before it.[19] I do not find that the General Division ignored or misunderstood significant evidence.

[24] The Claimant argues that the General Division did not recognize the evidence of the amended ROE. According to the Claimant, the General Division did not give consideration to the fact that the amended ROE had the correct reason for issuing, which was a shortage of work.

[25] The amended ROE is evidence that is relevant to whether the Claimant left his job voluntarily or was laid off. However, the original ROE is also evidence. The General Division must weigh all the relevant evidence to reach a conclusion, and it cannot ignore relevant evidence.

[26] The General Division did not make an important error of fact by ignoring or misunderstanding the evidence. The General Division member discussed both ROEs

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[17] AD1-4.
[18] See section 58(1)(c) of the DESD Act.
[19] Simpson v. Canada (Attorney General), 2012 FCA 82.

with the Claimant at the hearing. It also referred to the amended ROE in its decision.[20] The amended ROE supported the Claimant's testimony at the hearing.

[27] The General Division highlighted the inconsistencies in the Claimant's testimony at the hearing and previous statements made in his application for benefits and to agents of Service Canada.[21] In its decision, the General Division referred to both ROE's, the testimony of the Claimant and the evidence of his previous statements regarding his reasons for leaving his job.

[28] It is not the role of the Appeal Division to reassess or reweigh the evidence to decide whether the General Division has made an error. It may intervene only if the General Division made one of the errors described earlier in the grounds of appeal.[22] In this case, the General Division found that the evidence weighed more heavily in favour of a finding that the Claimant voluntarily left his employment over concerns about COVID-19. While it did take the amended ROE into consideration, it gave it less weight and decided that the Claimant was not laid off due to a shortage of work. There was sufficient evidence before the General Division to support this finding.

[29] The General Division also considered all relevant evidence when it determined that the Claimant had reasonable alternatives to leaving his job. Having found that the Claimant's reason for leaving was health concerns, it found that a reasonable alternative would have been to ask the employer to address these concerns.

[30] Aside from the Claimant's arguments, I have reviewed the file and examined the General Division decision.[23] The General Division did not make any errors of law or exceed its jurisdiction. The Claimant has not argued that the General Division acted unfairly in any way.

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[20] General Division decision at para 42.
[21] General Division decision at para 25.
[22] *Tracey v. Canada (Attorney General)*, 2015 FC 1300; *Griffin v. Canada (Attorney General)*, 2016 FC 874.
[23] The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Conclusion

[31] The General Division did not make an important error of fact when it found that the Claimant voluntarily left his employment without just cause. The appeal is dismissed.

Melanie Petrunia
Member, Appeal Division