Citation: *KM v Canada Employment Insurance Commission*, 2022 SST 898

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	K. M.
Respondent:	Canada Employment Insurance Commission
Representative:	Anick Dumoulin

Decision under appeal:	General Division decision dated April 2, 2022 (GE-21-404)

Tribunal member:	Jude Samson
Type of hearing:	Teleconference
Hearing date:	July 14, 2022
Hearing participants:	Appellant Respondent's representative
Decision date:	September 14, 2022
File number:	AD-22-220

Decision

[1] K. M. is the Claimant in this case. I'm dismissing his appeal for the reasons set out below.

Overview

[2] The Canada Employment Insurance Commission (Commission) paid Employment Insurance (EI) regular benefits to the Claimant. Later, the Claimant told the Commission that he had worked while receiving benefits.

[3] As a result, the Commission accounted for the Claimant's income and concluded that it had overpaid him by about $1,800. The Commission also disqualified the Claimant from receiving EI benefits after February 2, 2018. The Commission decided that, on that day, the Claimant left his job without just cause.[1] This decision resulted in an overpayment of over $15,000.

[4] The Claimant appealed the Commission's decisions to the Tribunal's General Division, but it dismissed his appeals.

[5] This decision is about the disqualification issue only.[2]

[6] Although the General Division made an error in this case, I agree with the outcome that it reached. As a result, I'm dismissing the Claimant's appeal.

Issues

[7] I'll consider the following issues in this decision:

a) Did the General Division make an error of law by not assessing the Claimant's circumstances fully?

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[1] In this context, "just cause" has a very specific meaning. It's defined under section 29(c) of the *Employment Insurance Act*.
[2] I've already refused leave (permission) to appeal the General Division's decision about the allocation issue that created the $1,800 overpayment: see my decision dated May 24, 2022, in file AD-22-219.

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

c) Did the Claimant have just cause for leaving his job?

Analysis

[8] I can intervene in this case only if the General Division made a relevant error.[3] In this appeal, my focus is on whether there's an error of law in the General Division decision. Any error of law can allow me to intervene.

The General Division made an error of law

[9] The main issue the General Division had to decide was whether the Claimant had just cause for leaving his job.

[10] To establish just cause, the Claimant had to prove that he had no reasonable alternative but to leave his job when he did.[4] As part of its assessment, the General Division had to consider all the relevant circumstances, including those listed under section 29(c) of the *Employment Insurance Act* (EI Act).

[11] During the General Division hearing, the Claimant argued that at least two of the circumstances listed under the EI Act applied to his case:[5]

- his employer engaged in practices that are contrary to law; and
- he faced undue pressure to leave his job.

[12] While the General Division summarized some of the Claimant's allegations, it never mentioned these particular circumstances. Instead, it moved quickly to its assessment of the Claimant's reasonable alternatives.[6]

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[3] 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).
[4] See *Canada (Attorney General) v White*, 2011 FCA 190 at paragraph 3.
[5] Listen to the audio recording of the General Division hearing starting at about 32:00. Also, see sections 29(c)(xi) and 29(c)(xiii) of the EI Act.
[6] See paragraph 18 of the General Division decision, which starts by saying, "I do not have to make a final determination on this point…".

[13] The Commission argues that the General Division applied the law correctly. It says that the General Division was aware of these issues because it asked during the hearing for the Claimant to explain how he was pressured to leave his job. It also says that the General Division doesn't need to mention each and every piece of evidence in its decision.[7]

[14] I disagree with the Commission's arguments on this point.

[15] Court and Tribunal decisions stress the need to make clear findings of fact before considering whether a person had reasonable alternatives to quitting their job.[8] The Tribunal has to follow these court decisions.

[16] But here, the General Division seemed to make few (if any) findings about the circumstances that led to the Claimant's decision to quit his job. Regardless of his circumstances, it found that the Claimant had reasonable alternatives to quitting when he did.

[17] The General Division needed to assess the Claimant's circumstances fully before considering his reasonable alternatives. In this case, that meant determining whether the Claimant met any of the circumstances listed under the EI Act. The General Division made an error of law by skipping this part of this analysis.

[18] I recognize that the General Division didn't need to mention every piece of **evidence** in its decision. However, its decision needed to deal with all the main **issues** raised by the parties.[9] The General Division needed to show that it was alive to these issues in its decision, not just at the hearing.

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[7] In support of this argument, the Commission relies on *Simpson v Canada (Attorney General)*, 2012 FCA 82 at paragraph 10.
[8] See *Bell v Canada (Attorney General)*, A-450-95; *Mcfarlane v Canada,* 1997 CanLII 5163 (FCA); *JG v Canada Employment Insurance Commission*, 2018 SST 23.
[9] The Supreme Court of Canada said this in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 127-128.

I will fix the General Division's error by giving the decision it should have given

[19] At the Appeal Division hearing, both parties argued that, if the General Division made an error, then I should give the decision the General Division should have given.[10] In particular, the Claimant wanted to avoid more delays.

[20] I agree. This means that I can decide whether the Claimant had just cause for leaving his job when he did.

The Claimant didn't have just cause for leaving his job

[21] The EI Act disqualifies the Claimant from receiving EI benefits if he voluntarily left his job without just cause.[11] There's no dispute that the Claimant voluntarily left his job. But did he have just cause for doing so?

[22] As alluded to above, just cause can be difficult to prove. It's not enough for the Claimant to show that it was reasonable for him to leave his job. Instead, I have to decide whether leaving his job was the only reasonable option in all the circumstances of his case.[12]

[23] I have to consider all the circumstances that existed when the Claimant left his job, including those listed under section 29(c) of the EI Act.[13] However, I can't consider the difficult circumstances that the Claimant described experiencing after he left his job.[14]

– Circumstances leading to the Claimant's decision to leave his job

[24] The Claimant is a travel agent. He found an opportunity to work with an agency that did a lot of leisure travel. However, his experience is in corporate travel. As a result, the Claimant and his new employer seemed to agree on an initial "try out" period.[15]

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[10] Sections 59(1) and 64(1) of the DESD Act give me the power to fix the General Division's error in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paragraphs 16–18.
[11] Specifically, see section 30 of the EI Act.
[12] See *Canada (Attorney General) v Laughland*, 2003 FCA 129 at paragraph 9.
[13] See *Canada (Attorney General) v Peppard*, 2017 FCA 110 at paragraph 7.
[14] See *Canada (Attorney General) v Langevin*, 2011 FCA 163 at paragraph 9.
[15] Listen to the audio recording of the General Division hearing starting at about 17:40.

During this time, the Claimant had no employment contract and the employer paid him in gift cards.

[25] The Claimant admitted to an investigator that he asked for this arrangement so that his EI benefits wouldn't be affected during this "try out" period with his new employer.[16]

[26] After working for about two weeks, the Claimant asked to normalize his employment status. He asked for regular pay and a contract recognizing his start date in January 2018.

[27] In the next two weeks, the atmosphere at the Claimant's work seems to have deteriorated. On Friday, February 2, 2018, the Claimant said that a co-worker cracked jokes in a rude way.[17] Later that day, he took a call from a client and then received a vague but accusatory email saying, "I thought I made myself clear."

[28] The Claimant described this incident as "the last straw." His gut told him that it was time to pack up his things and leave, so he did.[18]

[29] Over the weekend, the Claimant reflected on what had happened and considered returning to work. However, after reviewing the draft employment contract that the employer had provided on his last day, the Claimant decided not to return since all trust had been lost. Specifically, the employment contract had a signature date in February 2018, but didn't recognize that he had started working a month earlier.[19]

[16] See the notes of a telephone call starting on page GD3-29.
[17] Listen to the audio recording of the General Division hearing starting at about 32:35.
[18] See, for example, page GD3-19.
[19] The proposed employment contract starts on page GD2-21.

– **The employer engaged in practices that are contrary to law**

[30] The Claimant has shown that the employer didn't follow the law:

- It didn't take statutory deductions from his pay.[20]
- It didn't pay him in an appropriate form or provide him with a pay sheet.[21]

[31] However, it's worth remembering that the Claimant had agreed to these things as part of the "try out" period at the beginning of his employment.

– **The Claimant did not face undue pressure to leave his job**

[32] The Claimant didn't establish that the employer put undue pressure on him to leave his job.

[33] As a reminder, my focus is on the circumstances that existed up to the time when the Claimant left his job. There is an important timing element in this case because the Claimant's relationship with his previous employer soured significantly after he quit.[22]

[34] The Claimant described a personality conflict between him and a co-worker. He seems to have felt that this co-worker was rude and unfairly accused him of making mistakes.

[35] The Claimant's allegations are about a co-worker, not the employer. Plus, while this co-worker might have made the work atmosphere difficult, the Claimant hasn't described being pressured to leave his job.

[36] In fact, it's unclear why the employer would have pressured the Claimant to leave his job in all the circumstances of this case. Instead, the employer could presumably have ended the "try out" period at any time.

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[20] See, for example, section 82 of the EI Act, and the Claimant's paycheque on page GD2-27.
[21] See sections 42 and 46 of Quebec's *Act respecting labour standards*.
[22] For example, the Claimant said that he didn't talk to his employer about problems at work because he didn't realize what was going on until later: see page GD3-22.

[37] To the contrary, the employer showed that it wanted to keep the Claimant as an employee by offering him a contract on his last day of work. The Claimant also said that the employer called on February 5, 2018, and asked him to return to work.[23] And the employer later described how much it valued the Claimant's experience.[24]

[38] In all the circumstances, and despite the Claimant's demands, I can't find that the employer was pressuring the Claimant to quit by omitting the start date on his employment contract. There are other reasons why the employer might have done this, including the Claimant's request to be paid using gift cards.

– **The Claimant had reasonable alternatives to leaving his job**

[39] Although the Claimant has shown that the employer engaged in practices that are contrary to law, I still have to consider whether he had any reasonable alternatives to quitting his job.[25]

[40] The Claimant said the employer called him on Monday, February 5, 2018, and asked him to come back to work.[26] The Claimant refused to return because he had asked for certain things in his employment contract and the employer didn't provide them. To paraphrase, the Claimant lost trust in the employer and felt there was nothing else worth doing.

[41] I recognize that the Claimant encountered personal conflicts at work and that his draft employment contract was different from what he had requested. However, after considering all the Claimant's circumstances, individually and cumulatively, I've

[23] Listen to the audio recording of the General Division hearing starting at about 47:15.
[24] The notes of a telephone call between the employer and a Service Canada agent start on page GD3-17.
[25] For example, see *Canada (Attorney General) v Laughland*, 2003 FCA 129.
[26] Listen to the audio recording of the General Division hearing starting at about 47:15.

concluded that there were reasonable alternatives that the Claimant could have pursued instead of quitting his job. For example:[27]

- He could have made efforts to resolve these issues with his employer.
- He could have continued working while looking for another job.

[42] If the Claimant was unable to resolve these issues informally, he could have also complained to the authorities, including Quebec's Commission des normes, de l'équité, de la santé et de la sécurité du travail.

[43] Under the law, a person's "gut feeling" doesn't provide them with just cause to leave their job. Regardless of the Claimant's concerns, he had reasonable alternatives to quitting his job when he did.

[44] The Claimant argues that the EI scheme should be more flexible and to allow for short "try out" periods. However, I have no choice but to apply the law as it's written, even if it produces a harsh result.

[45] The Claimant also argues that, given all that's happened in this case, he's not the only one who should face consequences. However, the Claimant's file is the only one that I'm considering at this time.

[27] In *Canada (Attorney General) v White*, 2011 FCA 190 at paragraph 5, the Federal Court of Appeal said that these reasonable alternatives should be pursued in most cases:

Conclusion

[46] I concluded that the General Division made an error of law by not considering the Claimant's circumstances fully before assessing his reasonable alternatives. In the circumstances, I gave the decision the General Division should have given. In the end, however, I reached the same result: the Claimant didn't have just cause for leaving his job when he did.

[47] Since the outcome hasn't changed, I'm dismissing the Claimant's appeal.

Jude Samson
Member, Appeal Division