



Citation: *BH v Canada Employment Insurance Commission*, 2022 SST 945

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: B. H.

Respondent: Canada Employment Insurance Commission
Representative: J. Villeneuve

Decision under appeal: General Division decision dated June 3, 2022
(GE-22-1205)

Tribunal member: Jude Samson

Type of hearing: On the Record

Decision date: September 26, 2022

File number: AD-22-427

Decision

[1] B. H. is the Claimant in this case. I'm allowing his appeal and sending the file back to the General Division for reconsideration.

Overview

[2] The Canada Employment Insurance Commission (Commission) refused the Claimant's application for Employment Insurance (EI) benefits.¹ Specifically, the Commission disqualified the Claimant from receiving benefits saying that he had voluntarily left his job without just cause.²

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. However, it summarily dismissed his appeal. In other words, without a hearing.

[4] The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division.

[5] The General Division made an error by summarily dismissing the Claimant's appeal. As a result, I am sending the file back to the General Division for reconsideration.

Issue

[6] The issue in this appeal is whether the General Division applied the right legal test when summarily dismissing the Claimant's appeal.

¹ My decision refers to the Commission even though the Claimant corresponded with Service Canada. Service Canada delivers the EI program for the Commission.

² In this context, "just cause" has a specific meaning. It's defined under section 29(c) of the *Employment Insurance Act* (EI Act).

Analysis

[7] I can intervene in this case if the General Division applied the wrong legal test for dismissing an appeal without a hearing.³

– The legal test for summarily dismissing an appeal

[8] The General Division can summarily dismiss an appeal only if it has no reasonable chance of success.⁴ In other words, is it plain and obvious based on the materials in the file that the appeal is bound to fail?

[9] The question is **not** whether the Tribunal would dismiss the appeal after considering the facts, the law, and the parties' arguments. Instead, the question is whether the appeal must fail, regardless of any evidence and arguments the Claimant might provide at a hearing.⁵

– The law disqualifies some people from receiving EI benefits

[10] The law disqualifies people from receiving EI benefits if they lost a job because of their own misconduct or if they voluntarily left a job without just cause.⁶ The consequence is the same under both scenarios; however, different legal frameworks apply to each type of case.

– The General Division applied the wrong legal test in this case

[11] Here, the General Division decided that the Claimant voluntarily left his job without just cause. In other words, the Claimant had reasonable alternatives to leaving his job when he did.

³ The errors I can consider, also known as “grounds of appeal,” are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁴ See section 53(1) of the DESD Act and the Court’s decision in *Miter v Canada (Attorney General)*, 2017 FC 262.

⁵ The Tribunal described this legal test in *BB v Canada Employment Insurance Commission*, 2020 SST 951. The Federal Court of Appeal applied a similar test in *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1.

⁶ See section 30 of the EI Act.

[12] However, the Claimant has consistently denied leaving his job voluntarily.⁷ Instead, he says that the Government and his employer forced him to stop working. Specifically, the Claimant could only get to his worksite by plane. However, his refusal to get the COVID-19 vaccine prevented him from getting on a plane because of the Government's vaccine mandates.

[13] In the circumstances, the General Division had to consider the Claimant's arguments and make findings about how his job ended. Only then could the General Division determine the legal framework to apply in his case.

[14] In its decision, the General Division also relied heavily on the Commission's notes of various telephone calls.⁸ At a hearing, however, the Claimant might have disputed the accuracy of those notes, or provided additional details and explanations. He might have also challenged the reasonable alternatives that the General Division identified.

[15] The Claimant also argued that vaccine mandates are unconstitutional, and a violation of his freedoms. However, the General Division seems to have overlooked these issues entirely.

[16] Although the General Division referred to the correct legal test, it applied a different test. This is an error of law. The General Division could not have concluded based just on a review of the materials in the file that the appeal was bound to fail, regardless of what might have happened at a hearing.

– **I am fixing the General Division's error by sending the appeal back to the General Division for reconsideration**

[17] Given the General Division's error and the Appeal Division's limited ability to accept new evidence, I am sending this appeal back to the General Division for reconsideration.⁹

⁷ See, for example, pages GD2-1, GD3-36, and GD5-1.

⁸ For example, see paragraphs 10, 11, and 20 to 22 of the General Division decision.

⁹ Section 59(1) of the DESD Act gives me this power.

[18] To be clear, the General Division remains free to allow or dismiss the Claimant's appeal. However, the appeal does not meet the requirements for summary dismissal.

Conclusion

[19] I'm allowing the Claimant's appeal. The General Division did not apply the correct legal test for summary dismissal. As a result, I'm returning the file to the General Division for reconsideration.

Jude Samson
Member, Appeal Division