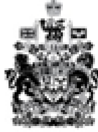

Citation: *YA v Canada Employment Insurance Commission*, 2022 SST 1071

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Y. A.
Respondent:	Canada Employment Insurance Commission
Representative:	Isabelle Thiffault

Decision under appeal:	General Division decision dated March 18, 2022 (GE-22-217)

Tribunal member:	Charlotte McQuade
Type of hearing:	Teleconference
Hearing date:	September 7, 2022
Hearing participants:	Appellant
Decision date:	October 21, 2022
File number:	AD-22-211

Decision

[1] I am allowing the appeal.

[2] The General Division based its decision on an important error of fact and made an error of law.

[3] I have made the decision the General Division should have. The Claimant has shown just cause for leaving his employment.

Overview

[4] Y. A. is the Claimant. He was working at a seasonal paving job, which required many overtime hours. At the same time, he was taking one school course. In September 2021, the Claimant began taking two courses. The Claimant asked his employer to reduce his hours to full-time hours so he could manage his schooling but the employer refused. The Claimant quit his job on September 10, 2021. He then applied for Employment Insurance (EI) regular benefits. A few weeks later, the Claimant's employer offered him his job back at full-time hours, which the Claimant accepted.

[5] The Canada Employment Insurance Commission (Commission) decided that the Claimant did not have just cause for quitting his job because he could have stayed employed until the end of the season instead of quitting to attend non-referred schooling. The Commission also decided the Claimant hadn't proven his availability for work from September 13, 2021, to January 3, 2022, because he was only available for work around his school obligations.

[6] The Claimant appealed these decisions to the Tribunal's General Division. The General Division decided the Claimant had proven his availability for work but because he quit work to attend school, he hadn't proven that he had just cause to quit.

[7] The Claimant appealed the General Division's decision. He says that the General Division made an important error of fact by overlooking his evidence that excessive overtime was also a circumstance of leaving.

[8] I am allowing the appeal. I have decided the General Division based its decision on an important error of fact when it decided attending school was the only circumstance of leaving. As well, the General Division made an error of law by not considering whether a circumstance of leaving was "excessive overtime work."[1]

[9] I have substituted my decision for that of the General Division. I find that the Claimant has shown just cause for leaving his job. He had no reasonable alternative to leaving, having regard to the circumstances in which he quit.

I didn't consider the Claimant's new evidence

[10] As part of his submissions, the Claimant included an email from his former employer confirming that he asked the employer to reduce his hours.[2] I decided at the Claimant's hearing that I wouldn't consider this document.

[11] The Appeal Division generally does not consider new evidence because the Appeal Division isn't rehearing the case. Instead, the Appeal Division is deciding whether the General Division made certain errors, and if so, how to fix those errors. In doing so, the Appeal Division looks at the evidence that the General Division had when it made its decision.

[12] There are a few limited exceptions to this rule but the Claimant's document did not meet those exceptions.[3]

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[1] See section 29(c)(viii) of the *Employment Insurance Act* (EI Act) which says "excessive overtime work" is a circumstance relevant to consider when deciding whether a claimant had just cause for quitting their job.
[2] See AD3-2.
[3] On an application for judicial review, the Federal Court will only accept new evidence if it provides general background information, highlights findings that the Tribunal made without supporting evidence, or reveals ways in which the Tribunal acted unfairly. See *Sharma v Canada (Attorney General)*, 2018 FCA 48, which explains the test for accepting new evidence. In *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 39, the Federal Court of Appeal accepts that the Appeal Division should be

[13] Since the General Division did not have this document when it made its decision, and since the document did not meet the allowable exceptions, I decided I couldn't consider it.

Issues

[14] The issues in this appeal are:

a) Did the General Division base its decision on an important error of fact that the Claimant's only circumstance of leaving was to attend school?

b) Did the General Division make an error of law by failing to consider whether a circumstance of leaving was "excessive overtime work"?[4]

Analysis

[15] The law says that a person is disqualified from benefits if the claimant voluntarily left their job without just cause.[5]

[16] The Commission had disqualified the Claimant from benefits because it said the Claimant had not shown just cause for voluntarily leaving his job.

[17] There was no dispute that the Claimant voluntarily left his job. The General Division had to decide whether the Claimant had just cause for doing so.

[18] "Just cause" exists if a claimant had no reasonable alternative to leaving, having regard to all the circumstances, including any of the circumstances set out in the law.[6]

[19] To decide just cause, the General Division must first make a finding of fact about what the circumstances of leaving are and whether they include any of the circumstances set out in the law.[7] The General Division then must decide whether the

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guided by the same exceptions to the rule against new evidence that apply to the courts on judicial review.

[4] See section 29(c)(viii) of the EI Act.

[5] Section 30 of the EI Act explains this.

[6] Section 29(c) of the EI Act describes the test for "just cause."

[7] See the cases of *Bell v Attorney General of Canada*, A-450-95 and *McFarlane v Her Majesty the Queen*, A-448-96, which explains this requirement.

Claimant had any reasonable alternatives to leaving, having regard to those circumstances.

[20] One of the circumstances set out in the law is “excessive overtime work.”[8]

[21] The Claimant explained to the General Division that he had a seasonal job and he worked long hours during the season, sometimes 60 hours per week and sometimes more. He would work 12–16 hours per day. He liked the money that he was making, but he had no time for anything else.[9]

[22] The Claimant also told the General Division he was taking two courses in September 2021. With the long hours, he had no time to do his course work. He asked his employer to reduce his hours but the employer refused as the season was still on. The Claimant knew that he couldn’t finish his final two courses if he was working the same long hours. So, he quit his job.[10]

[23] After quitting, the Claimant immediately began looking for a full-time job but a few weeks later, his employer offered him his job back at full-time hours, which he accepted.[11]

[24] The General Division decided that going to school was the only circumstance in which the Claimant quit his job.

[25] The case law says that if you quit your job just to go to school without a referral from the Commission or one of its designated authorities, you don’t have just cause for leaving your job.

[26] The General Division decided this case law applied to the Claimant so he didn’t have just cause for quitting.[12]

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[8] See Section 29(c)(viii) of the EI Act.
[9] See paragraph 16 of the General Division decision.
[10] See paragraphs 17 and 18 of the General Division decision.
[11] See paragraph 40 of the General Division decision.
[12] See paragraph 21 of the General Division decision.

The General Division based its decision on an important error of fact and made an error of law

[27] The General Division based its decision on an important error of fact when it decided that the Claimant's only circumstance of leaving was to attend school.

[28] This error of fact meant the General Division also made an error of law by not considering whether a circumstance of leaving was one of those set out in the law, that being "excessive overtime work."[13]

Error of fact

[29] The Appeal Division can intervene only in certain kinds of errors of fact. I can intervene only if the General Division based its decision on an erroneous finding of fact that it made perversely, capriciously, or without regard for the material before it.[14]

[30] If the General Division makes a factual finding that squarely contradicts or is unsupported by the evidence, its determination may be said to have been made perversely, capriciously, or without regard to the evidence.[15]

[31] The Claimant submits that the General Division made this kind of factual error. He says the General Division assumed that he quit his job to attend school but ignored the main fact that he quit due to excessive overtime. He says his evidence before the General Division was that he left because of the overtime hours.

[32] The Commission submits the General Division did not base its decision on an important error of fact. The Commission agrees that the excessive overtime situation was likely present but maintains the Claimant never provided the General Division with evidence that would lead the General Division to decide that the overtime was a circumstance of his leaving his job.

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[13] See section 29(c)(viii) of the EI Act.
[14] See section 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act).
[15] See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

[33] In that regard, the Commission refers to the Claimant's testimony from the General Division hearing. The Commission says the Claimant repeatedly said that he liked the hours of work and the money they brought in, but that he wanted to reduce his hours so that he could continue his course.[16]

[34] The Commission argues since the Claimant's long hours of work were discussed at the General Division hearing and the General Division considered them, there is no basis to intervene in the General Division's finding of fact about the circumstances in which the Claimant quit his job.

[35] Respectfully, I find the General Division's finding that the Claimant's only reason for quitting was inconsistent with key relevant evidence from the Claimant that it was the overtime work in combination with his schooling that caused him to quit.

[36] The General Division acknowledged that the Claimant's long hours were the reason he quit and he couldn't work those long hours while going to school because he did not have enough time to complete his coursework.[17]

[37] However, the General Division decided the overtime was not a circumstance of leaving because the Claimant said he was okay working the long hours because he was earning good money and the only reason he didn't want to work the long hours anymore was because it interfered with his course work.[18]

[38] The General Division assumed that, since the Claimant wouldn't have quit, absent the schooling, that meant the overtime was not relevant. But that was not the Claimant's evidence. His evidence was that he left because of how the overtime was impacting his ability to do his schooling.

[16] The Commission refers to the audio recording from the General Division hearing at approximately 0:29:00, 0:29:47, 0:30:06, and 0:48:20.
[17] See paragraph 22 of the General Division decision.
[18] See paragraphs 21 and 22 of the General Division decision.

[39] There was no evidence before the General Division that the Claimant would have quit his job to continue his schooling, absent the overtime issue. So, the overtime hours were relevant to his decision to leave.

[40] The General Division's finding of fact that school was the only circumstance of leaving was inconsistent with the Claimant's evidence and so, it was made without regard to the material before it.

[41] The General Division based its decision that the Claimant did not have just cause on this error of fact, since it only considered only the Claimant's schooling as a circumstance of leaving and did not also consider the overtime hours.

Error of law

[42] The error of fact made led the General Division to also make an error of law.

[43] "Excessive overtime work" is one of the circumstances set out in the law that is relevant to the question of just cause.[19]

[44] Since the General Division did not consider the overtime as a circumstance of leaving, it did not consider whether the Claimant's overtime hours amounted to "excessive overtime work."

[45] Because the General Division based its decision on an important error of fact and made an error of law, I can intervene in the decision.[20]

Remedy

[46] To remedy the errors, I can send the appeal back to the General Division for reconsideration or give the decision the General Division should have.[21]

[47] The Claimant said at his hearing that he wanted whoever could make the fastest decision to make it, whether I substitute my decision or send it back to the General

[19] See section 29(c)(viii) of the EI Act.
[20] See section 58(1) of the DESD Act which says this.
[21] See section 59(1) of the DESD Act, which gives me this authority.

Division for reconsideration. He asks that I find that he had just cause for leaving his employment.

[48] The Commission submits that the appeal should be dismissed but made no submissions about whether I should substitute my decision or send the matter back to the General Division for reconsideration, in the event I was to find a reviewable error.

[49] The Claimant had a full and fair opportunity to present his case before the General Division and the evidentiary record is sufficient to enable me to make a decision. So, I find this is an appropriate case for me to substitute my decision for that of the General Division.

Substituted decision

[50] The Claimant had just cause for leaving his job.

[51] There were several circumstances working together which prompted the Claimant to leave his job.

[52] I find one of those circumstances was an increase in the Claimant's course load from one to two courses.[22]

[53] As above, I find that another circumstance of leaving was the Claimant's overtime hours.

[54] I have decided the amount of overtime hours the Claimant was working amounted to "excessive overtime hours."[23]

[55] The General Division decided the Claimant worked 12 to 16-hour days and sometimes 60 hours per week.[24] I have no reason to interfere with the General Division's finding of fact about this and I accept the Claimant was working these hours.

[22] See paragraph 17 of the General Division decision.
[23] See section 29(c)(viii) of the EI Act.
[24] See paragraph 16 of the General Division decision.

[56] Although the Commission did not agree that the overtime hours were a circumstance of leaving, the Commission agrees that the situation of excessive overtime hours was likely present.[25]

[57] It is unclear from the evidence if the Claimant was aware these overtime hours would be required before starting this job. However, even if he was, I find the overtime hours still amount to "excessive overtime hours" for several reasons. First, the overtime appeared to be mandatory and regular, given the Claimant's employer would not consider his request to reduce to full-time hours.[26] Secondly, the hours were well in excess of what would be a typical workweek of 35 to 40 hours.

[58] The Claimant's circumstances of leaving, therefore, were an increased course load to two courses combined with excessive overtime hours.

[59] The law says that people, who quit their job to go to school without a referral from the Commission or an agency authorized by the Commission, do not have just cause for quitting.[27]

[60] If the Claimant's only circumstance of leaving were his schooling, he would not have just cause. However, I have to consider the excessive overtime hours as well.

[61] I find the Claimant has shown just cause because, considering the circumstances of the excessive overtime work and his increased course load, the Claimant had no reasonable alternative to leaving.

[62] The Commission submits that a reasonable alternative to quitting would have been for the Claimant to keep working at the overtime hours knowing that the season would be over a few weeks later or in the alternative, to suspend his schooling, given the reason he did not want to work the extra hours was due to his schooling. The Commission submits that the evidence does not support that the Claimant's working

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[25] See AD2-4.
[26] I heard the Claimant's testimony on the audio tape from the General Division hearing at approximately 0:29:58 that he asked his employer to reduce his hours to full-time hours.
[27] See *Canada (Attorney General) v Caron*, 2007 FCA 204.

conditions were so intolerable that his only alternative was to leave his position at the time he did.

[63] The Claimant submits that he had no reasonable alternative to leaving. He says he tried to get his employer to reduce the hours to full-time hours but his employer refused.

[64] The Claimant told the General Division that he could have stayed with his employer but he would not have been able to do the 120 hours every 2 weeks of hard crazy labour. He said it didn't stop at that as the employer also wanted him to work on weekends sometimes. He said he couldn't accommodate the employer any more as he needed those hours. He explained that sometimes the shifts were 12 to 16 hours and it got to the point it was crazy. He said the employer was trying to push any jobs they had. The Claimant explained that everyone likes the money from the overtime but the work did not fit his lifestyle. He couldn't do those hours, as he needed some time for himself and his schooling.[28]

[65] The Claimant pursued the reasonable alternative of speaking to his employer to try to reduce his hours to full-time hours.

[66] Respectfully, I don't agree with the Commission that it was reasonable to ask the Claimant to maintain these excessive overtime hours until the end of the season, which according to the Claimant's application for benefits would have been mid-November 2021. The Claimant said this was "hard crazy labour" in which these extra hours were being done. It is not reasonable to expect such hours be maintained in any job, and it is even less reasonable to expect such hours to be maintained in a labour job.

[67] I don't think it matters whether it was the Claimant's schooling that was being impacted by the excessive overtime hours or some other personal activity. The critical point is that the Claimant had to work 12 to 16 hours a day on a regular basis, leaving little time for anything else.

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[28] I heard this from the audio recording of the General Division hearing at approximately 0:48:30 to 0:51:35.

[68] For the same reason, it wasn't a reasonable alternative for the Claimant to continue working the excessive overtime hours while trying to find another job.

[69] I find, therefore, having regard to the circumstances of quitting, the Claimant had no reasonable alternative to leaving his employment. So, he has shown just cause.

Conclusion

[70] The appeal is allowed. The General Division based its decision on an important error of fact made without regard to the material before it and made an error of law.

[71] I have substituted my decision for that of the General Division. The Claimant had just cause for voluntarily leaving his employment. So, the disqualification imposed by the Commission is removed.

Charlotte McQuade
Member, Appeal Division