



Citation: *JO v Canada Employment Insurance Commission*, 2022 SST 1324

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** J. O.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** A. Fricker

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**Decision under appeal:** General Division decision dated May 29, 2022  
(GE-22-856)

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**Tribunal member:** Jude Samson

**Type of hearing:** Teleconference

**Hearing date:** September 27, 2022

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** November 16, 2022

**File number:** AD-22-357

## Decision

[1] J. O. is the Claimant in this case. I'm dismissing his appeal.

## Overview

[2] The Claimant took a leave of absence of about five weeks in February and March 2021. He was worried about getting COVID-19 following an outbreak in his area, including some cases at his workplace. The Claimant's employer approved his leave of absence.

[3] The Canada Employment Insurance Commission (Commission) paid benefits to the Claimant while he was on leave. However, the Commission later decided that he didn't have just cause for taking a leave of absence from his job.<sup>1</sup> So, the Commission asked the Claimant to repay the benefits that he had received.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division but it dismissed his appeal. The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division.

[5] Although the General Division decision could have been better written, it doesn't contain any of the errors that would allow me to intervene in this case. As a result, I'm dismissing the Claimant's appeal.

## Issues

[6] The issues in this appeal are:

- a) Did the General Division make an error of law or jurisdiction by overlooking whether the Claimant's working conditions were a danger to his health or safety?

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<sup>1</sup> In this context, "just cause" has a very specific meaning. It's defined under section 29(c) of the *Employment Insurance Act* (EI Act).

b) Did the General Division make any other relevant errors?

## Analysis

[7] The law provides a list of errors that I can consider.<sup>2</sup> I can intervene in this case only if the General Division made one of these errors.

### **The General Division considered the Claimant's health and safety concerns**

[8] The law says that a person cannot receive EI benefits if they take a leave of absence without just cause.<sup>3</sup> So, the main issue the General Division had to decide in this case was whether the Claimant had just cause for taking a leave of absence.

[9] To establish just cause, the Claimant had to show that he had no reasonable alternative to taking a leave of absence.<sup>4</sup> As part of its assessment, the General Division had to consider all the Claimant's circumstances, including those listed under section 29(c) of the *Employment Insurance Act* (EI Act).

[10] Here, the Claimant said that he took a leave of absence because he was "fearful of COVID."<sup>5</sup> So, Did the General Division make a relevant error by overlooking section 29(c)(iv) of the EI Act? That section refers to the situation where a person's working conditions pose a danger to their health or safety.

[11] The Claimant never specifically raised section 29(c)(iv) of the EI Act. Nor did he mention any underlying conditions that put him at greater risk if infected with COVID-19. However, he noted that he worked with a vulnerable individual and that working during a COVID-19 outbreak caused him some stress and anxiety.<sup>6</sup>

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<sup>2</sup> The relevant errors, also known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>3</sup> See section 32 of the EI Act.

<sup>4</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at paragraph 3.

<sup>5</sup> Listen to the audio recording of the Appeal Division hearing starting at about 26:00

<sup>6</sup> See, for example, pages GD2-4, GD3-15, and GD3-21 to GD3-22 in the appeal record.

[12] Even if the General Division didn't specifically mention section 29(c)(iv) of the EI Act, I'm satisfied that it considered all the Claimant's circumstances, including his health and safety concerns. For example, the General Division:

- considered the Claimant's fears of getting infected with COVID-19, along with his stress and anxiety;<sup>7</sup>
- considered the medical evidence about the Claimant's mental health;<sup>8</sup>
- identified reasonable alternatives that would have helped address the Claimant's health and safety concerns;<sup>9</sup>
- concluded that the Claimant didn't "meet any of the allowable reasons outlined in section 29(c) of the [EI Act]."<sup>10</sup>

[13] As a result, the General Division didn't commit an error of law or jurisdiction. Instead, it considered the Claimant's health concerns, along with all his other relevant circumstances.

### **The General Division didn't make any other relevant errors**

[14] The Claimant also argued that I should intervene in his case for the following reasons:

- The General Division repeatedly used the wrong pronouns.
- The General Division based its decision on important errors about how often the Claimant went to public places and about the severity of his anxiety and stress.
- The General Division decision contains important discrepancies because it was too rushed.

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<sup>7</sup> See paragraphs 15 to 21 of the General Division decision.

<sup>8</sup> See paragraphs 21 and 22 of the General Division decision.

<sup>9</sup> See paragraphs 24 to 26 of the General Division decision.

<sup>10</sup> See paragraph 28 of the General Division decision.

[15] I agree that the General Division decision could have been better written. However, none of the Claimant's arguments amount to a relevant error that allows me to intervene in his case.

[16] For example, I can't intervene just because the General Division made a mistake about a minor fact in the case. Instead, the law only allows me to intervene if the General Division "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."<sup>11</sup> This involves considering the following questions:<sup>12</sup>

- Does the evidence squarely contradict one of the General Division's key findings?
- Is there no evidence that could rationally support one of the General Division's key findings?
- Did the General Division overlook critical evidence that contradicts one of its key findings?

[17] None of the Claimant's allegations meets the criteria above in a way that would allow me to intervene in his case.

[18] Similarly, the Claimant's arguments don't persuade me that the General Division applied the wrong legal test, or that it acted unfairly towards the Claimant.

[19] As a result, the General Division made no relevant errors that justify my intervention.

## Conclusion

[20] I have a lot of sympathy for the Claimant's situation. I recognize that he was trying to do the right thing by taking the prudent course. However, I have not found an

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<sup>11</sup> This is in section 58(1)(c) of the DESD Act.

<sup>12</sup> This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

error that would allow me to change the General Division decision. As a result, I have to dismiss his appeal.

[21] If he hasn't already done so, the Claimant could contact the Canada Revenue Agency to ask if some or all of his debt could be written off (cancelled) because it's causing him serious financial hardship.<sup>13</sup> Alternatively, the Claimant and the Canada Revenue Agency might be able to agree to a manageable repayment plan.

Jude Samson  
Member, Appeal Division

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<sup>13</sup> See section 56 of the EI Regulations. The Canada Revenue Agency's Debt Management Call Centre can be reached at 1-866-864-5823.