



Citation: *AM v Canada Employment Insurance Commission*, 2022 SST 1256

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. M.

Respondent: Canada Employment Insurance Commission
Representative: Rachel Paquette

Decision under appeal: General Division decision dated July 25, 2022
(GE-22-871)

Tribunal member: Janet Lew

Type of hearing: On the Record

Decision date: November 14, 2022

File number: AD-22-594

Decision

[1] The appeal is allowed. The matter will go back to a different member of the General Division for reconsideration.

Overview

[2] This is an appeal of the General Division decision.

[3] The General Division accepted that the Appellant, A. M. (Claimant) was laid off from his employment because of a shortage of work. It found that he was entitled to Employment Insurance benefits between January 21, 2021 and February 25, 2021.

[4] However, the General Division found that the Claimant was not entitled to benefits starting February 25, 2021. It found that he took an unauthorized leave of absence from his employment. The General Division also found that the Claimant lost his job on October 6, 2021 due to misconduct. As a result, the General Division decided that he was disqualified from receiving benefits starting October 6, 2021, to the end of his claim. The General Division dismissed the Claimant's appeal, with modifications to the reason for and period of disqualification on the claim.

[5] The Claimant argues that the General Division should not have accepted his employer's statement without getting supporting records.

[6] The Respondent, the Canada Employment Insurance Commission (Commission), agrees that there are grounds for appeal. The Commission says the General Division made the following errors:

- (a) It ignored section 29(b.1)(ii) of the *Employment Insurance Act* when it concluded that the Claimant did not leave his employment,
- (b) It failed to apply the legal test for misconduct when it concluded that the Claimant lost his employment in October 6, 2021 because of misconduct, and

- (c) It made a factual error when it determined that the Claimant was dismissed from his employment for misconduct.

[7] The Commission asks the Appeal Division to allow the appeal and to return the matter to the General Division for a reconsideration.

Issues

[8] The issues in this appeal are as follows:

- (a) Did the General Division ignore section 29(b.1)(ii) of the *Employment Insurance Act* when it concluded that the Claimant did not leave his employment?
- (b) Did the General Division fail to apply the legal test for misconduct when it concluded that the Claimant lost his employment in October 6, 2021 because of misconduct?
- (c) Did the General Division make a factual error when it determined that the Claimant was dismissed from his employment?

Analysis

[9] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.¹

Did the General Division make a factual error when it determined that the Claimant was dismissed from his employment?

[10] The General Division determined that the Claimant lost his employment because of misconduct.

[11] The Commission argues that there was no evidence before the General Division that indicated that the Claimant lost his employment because of misconduct.² Indeed,

¹ See section 58(1) of the *Department of Employment and Social Development Act*.

² See Commission's Representations to the Social Security Tribunal – Appeal Division, filed October 24, 2022, at AD2.

the employer provided a Record of Employment stating that the Claimant quit his employment.³ When the Commission spoke with the employer, the employer reported that the Claimant had quit.⁴ The Commission accepted that the Claimant had voluntarily left his employment.⁵

[12] The Claimant disputes that he quit his employment. In his reconsideration request, he denied that he voluntarily left his employment.⁶ From his point of view, the Claimant believed he was still on a layoff from work.⁷

[13] I do not see any evidence that could support the General Division's finding that the Claimant's employer dismissed him for misconduct. The General Division made a factual error under section 58(1) of the *Department of Employment and Social Development Act* when it concluded that the Claimant was dismissed for misconduct.

Did the General Division fail to apply the legal test for misconduct?

[14] As there was no evidence that the Claimant lost his employment because of misconduct, it is irrelevant whether the General Division properly applied the legal test for misconduct.

Did the General Division ignore section 29(b.1)(ii) of the *Employment Insurance Act*?

[15] Finally, the Commission argues that the General Division did not address section 29(b.1)(ii) of the *Employment Insurance Act*. That section says that voluntarily leaving an employment includes

- (ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed

³ See Record of Employment dated October 6, 2021, at GD3-19.

⁴ See Supplementary Record of Claim dated February 15, 2022, at GD3-29.

⁵ See Commission's initial decision dated December 31, 2021, at GD3-22, and reconsideration decision dated February 17, 2022, at GD3-30.

⁶ See Claimant's request for reconsideration, date stamped received January 26, 2021, at GD3-26.

⁷ See Notice of Appeal to the General Division filed March 8, 2022, at GD2.

[16] The General Division noted the employer's statements that it had asked the Claimant to return to work. Given this evidence, the General Division should have considered section 29(b.1)(ii) of the *Employment Insurance Act*.

Remedy

[17] The Commission asks the Appeal Division to send the matter back to the General Division for reconsideration. The Claimant has no objections to sending the matter back. That is the appropriate remedy in this case, as it will provide the Claimant with a fair opportunity to clarify his position.

Conclusion

[18] The appeal is allowed. I am returning this matter to a different member of the General Division for reconsideration.

Janet Lew
Member, Appeal Division