Citation: *GV v Canada Employment Insurance Commission*, 2023 SST 14

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	G. V.
Respondent:	Canada Employment Insurance Commission
Representative:	Rachel Paquette

Decision under appeal:	General Division decision dated August 29, 2022 (GE-22-1402)

Tribunal member:	Stephen Bergen
Type of hearing:	Teleconference
Hearing date:	December 19, 2022
Hearing participants:	Appellant Respondent's representative
Decision date:	January 7, 2023
File number:	AD-22-669

Decision

[1] I am dismissing the appeal.

Overview

[2] G. V. is the Appellant and also the benefit claimant (Claimant). The Claimant quit his job after a disagreement with his employer. His employer told the Claimant to do a job in a particular way, and the Claimant disagreed. His employer threatened him with suspension if he did not do as he was told, so the Claimant quit.

[3] The Canada Employment Insurance Commission (Commission) found that the Claimant had left his job without just cause because he had reasonable alternatives to leaving. It would not change its decision when the Claimant asked it to reconsider.

[4] The Claimant appealed the Commission's reconsideration decision to the General Division. The General Division agreed with the Commission and dismissed the appeal.

[5] I granted the Claimant permission (leave) to appeal to the Appeal Division and I heard the appeal on December 19, 2022.

[6] I am dismissing the appeal. The General Division did not make an error of procedural fairness or an important error of fact.

Issues

[7] Was the General Division hearing process unfair to the Claimant?

[8] Did the General Division make an important error of fact by ignoring or misunderstanding evidence relevant to its finding that the Claimant had no reasonable alternative to leaving his employment?

Analysis

[9] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

a) The General Division hearing process was not fair in some way.

b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).

c) The General Division made an error of law when making its decision

d) The General Division based its decision on an important error of fact.[1]

Procedural fairness

[10] In the Claimant's application for leave to appeal, he indicated that he believed that the General Division made an error of procedural fairness.

[11] As I explained in my decision granting leave to appeal, the "procedural fairness" ground of appeal is meant to describe the situation where the General Division follows an unfair **process**. It does not apply where a party is only claiming that he or she disagrees with the decision, or thinks that the result is unfair.

[12] When I reviewed the grounds of appeal at the hearing, I explained this to the Claimant. Once he understood the grounds of appeal, the Claimant stated that he believed the General Division made an important error of fact.

[13] At the Appeal Division hearing, the Claimant did not elaborate on his claim that the General Division made an error of procedural fairness. He did not make an argument that the General Division process was unfair, nor did he point to anything that could support such an argument.

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[1] This is a plain language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

[14] There is nothing on the face of the file to suggest that the General Division process was unfair. I find that the General Division did not make an error of procedural fairness.

Important error of fact

[15] The *Employment Insurance Act* (EI Act) disqualifies claimants from receiving benefits if they voluntarily leave their employment without "just cause". The EI Act says that just cause for leaving exists where a claimant has "no reasonable alternative to leaving or taking leave, having regard to all the circumstances."[2]

[16] The EI Act also lists some of the circumstances that must be considered, where there is evidence to suggest they exist. One of the listed circumstances is "dangerous or unhealthy working conditions."[3] Another is "antagonism with a supervisor if the claimant is not primarily responsible for that antagonism."[4]

– Dangerous working conditions

[17] The General Division found that the Claimant's reasons for quitting did not include any safety concerns.[5]

[18] The Claimant had argued to the General Division that his employer was asking him to do something that was unsafe. In his testimony, he said that the employer asked him to change large, heavy tires by himself from an industrial forklift vehicle mired in mud.

[19] The Claimant had told the General Division that the tires were huge, weighing three hundred pounds, and he supplied the General Division with pictures of industrial forklifts to give the General Division member a better idea of the tire size.

[20] At the Appeal Division, the Claimant argued that the General Division overlooked or failed to appreciate the size of the tires that his employer had been asking him to

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[2] See section 29(c) of the EI Act.
[3] See section 29(c)(iv) of the EI Act.
[4] See section 29(c)(x) of the EI Act.
[5] See General Division decision at para 39.

change. He acknowledged that the General Division rejected the employer's evidence that the tires were similar to car tires, and that it had found that they were larger and heavier than car tires. However, he still argued that the General Division failed to appreciate just how large the tires were.

[21] I do not accept that the General Division ignored or misunderstood evidence of the size of the tires.

[22] The General Division referred to the Claimant's testimony that the tires were 300 pounds, as well as to the "photo" evidence provided by the Claimant. It stated that the evidence did not show exactly how big the tires were, but noted that the photos suggested they were larger and heavier than car tires.

[23] The Claimant can only speculate that the General Division did not fully comprehend the size of the tires. The General Division reviewed such evidence as was available, which included both the claimant's estimate of the tire weight and the photos demonstrating the size of similar tires. If the Claimant is suggesting that the evidence available to the General Division was inadequate, this is not something that the General Division could have fixed.

[24] In any event, the General Division did not find that the Claimant's task was without hazard. It found that the Claimant's safety concern was not the reason he quit. This finding does not depend on the size of the tires.

[25] The General Division did not accept that the Claimant could have brought a safety complaint forward as a reasonable alternative. This was because the General Division found that the Claimant quit impulsively, in circumstances where there would not have been time to have any safety concerns addressed.

[26] However, the General Division did not need to analyze whether "reasonable alternatives to leaving" existed that would have addressed the Claimant's safety

concerns; because it did not believe the Claimant actually was concerned for his safety.[6] The General Division did not accept that the Claimant's evidence was reliable.[7]

[27] The General Division explained why it questioned the Claimant's reliability. It noted that the Claimant had significantly exaggerated the depth of the mud in which the forklift was located. It also said that the Claimant changed his evidence about the employer's behaviour.

[28] Regarding the Claimant's safety concern, the General Division said that the Claimant's earlier statements did not match with what he said later. The General Division noted that the Claimant had not mentioned any safety concerns until months after he quit. He did not mention them when he completed his application for benefits, and he did not check the box "dangerous working conditions" as one of his reasons for quitting. The General Division gave more weight to the Claimant's earlier explanation that his decision to quit was a heat-of-the-moment decision after an argument with his employer.[8] It explained that the Claimant made his initial statements soon after he quit when his memory would have been clearer.[9]

[29] Weighing evidence and assessing credibility are the General Division's job. The Appeal Division is charged with reviewing the General Division decision for errors within the ground of appeal: It is not the Appeal Division's job to re-weigh the evidence or second-guess the General Division.[10] I cannot consider whether the General Division should have weighed the evidence differently.

[30] The General Division did not ignore or misunderstand any evidence that affected its finding that the Claimant did not quit because of any concern about safety.

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[6] See General Division decision at paras 39 and 42.
[7] See General Division decision at para 31.
[8] See General Division decision at para 42.
[9] See General Division decision at para 38.
[10] See the decision of the Federal Court in *Rouleau v. Canada (Attorney General)*, 2017 FC 534, at para 42.

– Antagonism with a supervisor

[31] The General Division did not find that the Claimant's circumstances amounted to "antagonism with a supervisor".

[32] The General Division found that the Claimant's own evidence was unreliable as to whether the Claimant's conflict with his supervisor was long-standing, or specific to the day he quit. It noted that the Claimant said that the employer was not usually "like that" (meaning that he did not usually act the way he did when he insisted the Claimant change the forklift tires at the customer's worksite). The General Division contrasted this with the Claimant's later testimony that the employer had always been "abusive".[11]

[33] The Claimant had not claimed that his relationship to the employer was antagonistic, in so many words. He provided only his impressions of the employer. He said that the employer (who is also the supervisor that was directing him on the day that he quit) had "always been abusive", that he was "like a dictator", and that he had "acted like a savage on the last day".[12]

[34] However, the Claimant did not describe how or why the employer was antagonistic to him and he gave no specific examples of antagonistic interactions, except only that he described his argument with the employer on the day he quit.

[35] In any event, the General Division's job was to decide whether the Claimant had just cause, having regard to all the circumstances. Regardless of whether the Claimant's dispute with his employer on the date he quit meets the definition of "antagonism with a supervisor", the General Division took the circumstances of that dispute into consideration when it made its decision.

[36] The General Division did not overlook or misunderstand the circumstances of the Claimant's conflict with the employer. It understood the Claimant's evidence that his employer asked him to complete the tire change at the customer's worksite, and in the

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[11] See General Division decision at para 34.
[12] See General Division decision, para 22.

heat and mud.[13] It understood that the task was potentially hazardous,[14] that he might not be able to do the job right[15] and that the Claimant felt his employer would be overcharging the customer.[16] It understood that the Claimant did not appreciate being threatened and that he felt pressured to quit.[17]

– **Reasonable alternatives**

[37] Despite the Claimant's conflict with his employer on the day that he quit, the General Division found that the Claimant had reasonable alternatives to leaving. It found that he could have tried to resolve the conflict after he got back to the shop and tempers had cooled, and that he could have kept the job while he looked for some other employment.

[38] In my leave to appeal decision, I considered that the Claimant might have an argument that resolving the conflict with the employer back at the shop could not be a reasonable alternative - **if the Claimant had already quit** before he returned to the shop.

[39] However, the Commission argued that the Claimant had not already quit. Therefore, the General Division did not make an error in identifying reasonable alternatives that would have involved the Claimant postponing his decision to quit for a period.

[40] I have carefully reviewed the record, including the Claimant`s testimony and I have to agree with the Commission.

[41] The Claimant was clear that he quit because of an argument with his employer. He viewed the employer's demands and the threat of suspension as unreasonable. The "argument" in question arose in the course of a telephone conversation between the

[13] See General Division decision at para 21.
[14] See General Division decision at para16.
[15] See General Division decision at para 14.
[16] See General Division decision at para 21.
[17] See General Division decision at para 44.

Claimant and the employer. This took place while the Claimant was still at the customer's worksite.

[42] The General Division decision gives the impression that the employer provoked the Claimant and that he quit instantly. It called the Claimant's decision "a heat-of-the-moment decision following an argument",[18] in which "the employer insisted he continue working in the heat and mud and threatened him with a suspension."[19] It called the Claimant's decision an "impulsive reaction," and a "spur-of-the-moment occurrence".[20]

[43] However, the evidence before the General Division was that the Claimant did not actually tell the employer, or anyone else, that he quit until he returned to the shop.

[44] The Claimant made a statement to the Commission about when he quit. The Commission's notes record:

> The claimant said that [sic] would not jeopardize his safety and integrity again and brought the trunk back and quit.

[45] The order in which the Claimant described events in his testimony and how he recorded those events in his statement, suggests that he did not quit until after he returned to the shop with the tires.

[46] This is consistent with his testimony to the General Division. The Claimant testified that he told the employer, "You don't have to threaten to fire me or for me stay home." The Claimant continued, "I brought back his tires, and I left them there, and I says [sic]: This is my last day. And I left. That was it."[21]

[47] However, the Commission records the same events elsewhere in its file in a way that suggests the events could have occurred in a different order. The Commission took notes of its discussion with the employer, which read as follows:

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[18] See General Division decision at para 42
[19] See General Division decision at para 42.
[20] See General Division decision at para 49
[21] Listen to the audio recording of the General Division hearing at timestamp 00:19:45

> The employer said that the claimant said it [sic] either I bring it to the shop or I quit. The employer said that if he does not want to do the job he could go home. The employer said the claimant quit and brought the truck back to the shop.[22]

[48] It is possible to infer from these notes that the employer considered the Claimant to have quit before he returned to the shop. However, they could also support other inferences. The employer did not say what he was thinking of when he said the claimant quit. He may have only spoken of the claimant's quitting generally, as a present explanation for why the Claimant had ignored the employer to bring the truck back.

[49] The employer did not testify at the General Division to elaborate on his version of events, or to clarify his statement. However, the General Division member questioned the Claimant about the employer's statement, and the Claimant was able to make his own testimony quite clear.

[50] The Claimant denied that he told the employer that he would quit if he could not repair the tires at the shop.[23] The Claimant testified, "I didn't say it in those words, no." Later, he emphasized that he had not told the employer he quit, saying that, "… it was false."

[51] There was no evidence that the Claimant told the employer he was quitting in the course of his telephone conversation with the employer, or before he returned to the employer's shop. Nor was there evidence from which the General Division might have inferred that the Claimant quit through his actions.

[52] The Claimant testified that he asked the employer to let him bring the tires back to the shop to do the job properly and that the employer responded that he should go home if he didn't want to do the job. The Claimant stated, "And that's basically what I did."[24]

[53] However, this does not mean that either the Claimant or the employer accepted that the Claimant was quitting by leaving the customer jobsite or going home. The

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[22] See GD3-31.
[23] Listen to the audio recording of the General Division hearing at timestamp 00:37:20
[24] Listen to the audio recording of the General Division hearing at timestamp 00:39:20.

Claimant testified earlier in the General Division hearing that he understood that the employer was telling him he could either do as he was told, or go home as a form of brief suspension.[25] The Claimant's decision to leave the worksite against his employer's instructions did not mean that he had given up his job at that point.

[54] To find that the Claimant could have tried to resolve the conflict with his employer back at the shop (as a reasonable alternative to quitting), the General Division would have had to accept that the Claimant still had a choice to stay or to leave. It would have had to accept that he had not already quit.

[55] It would have been preferable for the General Division to be clear about when the Clamant quit, and to identify the words or actions that constituted quitting. It is unfortunate that the General Division did not make an explicit finding on these facts.

[56] However, I do not think it was an error for the General Division to omit such a finding. I accept that the General Division understood that the Claimant did not quit until he returned to the shop. In light of the evidence that was before it, it is likely that the General Division understood this fact to be undisputed.

[57] The General Division is not required to make a finding of fact where the fact itself is undisputed. The Claimant specifically denied having told the employer that he was quitting at the customer worksite. The only words he used to express that he meant to quit were after he brought the tires back. He said, "This is my last day" before he left the employer's shop.

[58] The General Division did not make an important error of fact. Its decision does not suggest that it misunderstood the evidence about when and how the Claimant quit. It did not ignore or misunderstand any other relevant evidence when it found that the Claimant had reasonable alternatives to quitting.

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[25] Listen to the audio recording of the General Division hearing at timestamp 00:18:00 and at 00:31:00.

Conclusion

[59] I am dismissing the appeal. The General Division did not make an error of procedural fairness or an important error of fact.

Stephen Bergen
Member, Appeal Division