



Citation: *Canada Employment Insurance Commission v MA*, 2023 SST 609

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Gilles-Luc Bélanger

Respondent: M. A.

Decision under appeal: General Division decision dated February 16, 2023
(GE-22-3808)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference

Hearing date: May 17, 2023

Hearing participants: Appellant's representative
Respondent

Decision date: May 19, 2023

File number: AD-23-234

Decision

[1] The appeal is dismissed.

Overview

[2] The Respondent (Commission) decided that the Appellant (Claimant) was disentitled from receiving EI regular benefits because he left his job voluntarily (chose to quit) without just cause. It considered the Claimant's two days of training as a job.

[3] The Claimant requested reconsideration and argued that he did not accept the job with the employer and did not work for them professionally. After reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant was not employed because he did not actually start the job he was hired to perform. Because it found the Claimant was not employed, the General Division concluded that there was no need to address whether he voluntarily left his employment without just cause.

[5] The Appeal Division granted the Commission leave to appeal. The Commission submits the General Division made an error by concluding that the Claimant was not employed and that there was no need to decide whether he had voluntarily left his employment without just cause. The Commission submits that if the Claimant refused the job, the General Division should have ruled on the reason why the Claimant refused to work for his employer and consider whether he had good cause for refusing it.

[6] I must decide whether the General Division made an error by concluding that the Claimant was not employed and that there was no need to decide whether he had left his employment without just cause. I must also decide whether the General Division should have ruled on the reason why the Claimant refused to work for the employer and consider whether he had good cause for refusing it.

[7] I am dismissing the Commission's appeal.

Issues

[8] Did the General Division make an error by concluding that the Claimant was not employed and that there was no need to decide whether he had left his employment without just cause?

[9] Did the General Division make an error by not ruling on the reason why the Claimant refused to work for the employer and consider whether he had good cause for refusing it?

Analysis

Appeal Division's mandate

[10] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[11] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.²

[12] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, I must dismiss the appeal.

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

² *Idem*.

Did the General Division make an error by concluding that the Claimant was not employed and that there was no need to decide whether he had left his employment without just cause?

[13] The issue before the General Division was whether the Claimant had just cause to voluntarily leave his employment pursuant to the *Employment Insurance Act*.³

[14] The General Division found that the Claimant was not employed because he did not actually start the job he was hired to perform. Because it found the Claimant was not employed, the General Division concluded that there was no need to address whether he voluntarily left his employment without just cause.

[15] To support its conclusion, the General Division considered the offer of employment submitted by the employer. The offer does not mention any training prior to the mentioned start date of May 30, 2022.

[16] The General Division considered that the manager told the Claimant he could come and check it out for 3 or 4 days to see if he liked it. He went for two days on May 25 and 26, 2022. The General Division considered that the Claimant did not know he was going to be paid by the employer.

[17] The General Division concluded from the evidence that the Claimant did receive an offer of employment, that he did not sign it, and that he declined the offer after he noticed that the employer's representations during the interview were not truthful regarding the possibility for him to sell 18 to 20 cars a month. The lack of inventory and the delays to deliver cars to the dealership made those representations impossible.

[18] The preponderant evidence supports the General Division's conclusion that the Claimant never accepted the job offer but essentially went to the employer to check out its proposal and decide whether he would accept the offer of employment that was presented to him.

³ See sections 29 and 30 of the *Employment Insurance Act*.

[19] I am of the view that the present case is not one where the Claimant formally accepted an offer of employment and then left the job during training.⁴

[20] It is also not my role to re-assess the evidence already heard and considered by the General Division. The General Division made its findings based on the evidence it received, and I am in no position to disturb them.

[21] Therefore, this ground of appeal is dismissed.

Did the General Division make an error by not ruling on the reason why the Claimant refused to work for his employer and consider whether he had good cause for refusing it?

[22] The Commission submits that if the Claimant refused the job, the General Division should have ruled on the reason why the Claimant refused to work for the employer and consider whether he had good cause for refusing it.

[23] I disagree.

[24] The issue before the General Division was whether the Claimant had just cause to voluntarily leave his employment.⁵ Not whether the Claimant has failed to accept employment after it has been offered to him or has not taken advantage of an opportunity for suitable employment.⁶ The Commission cannot try to mold the two issues into one and the same issue.

[25] Failure to take advantage of an opportunity for suitable employment (failure to accept a job) and leaving employment voluntarily represent reasons and issues with separate identities.⁷

⁴ *Campeau v Canada (AG)*, 2006 FCA 376.

⁵ See reconsideration decision, GD3-36.

⁶ See section 27 of the *Employment Insurance Act*.

⁷ See *Campeau* note 2, CUB 43961.

[26] I am of the view that the General Division made no error when it did not consider why the Claimant refused to work for the employer and consider whether he had good cause for refusing it.

[27] Therefore, this ground of appeal is dismissed.

Conclusion

[28] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division