Citation: *MA v Canada Employment Insurance Commission*, 2023 SST 801

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	M. A.
Respondent:	Canada Employment Insurance Commission
Representative:	D. M.

Decision under appeal:	General Division decision dated March 17, 2023 (GE-23-339)

Tribunal member:	Pierre Lafontaine
Type of hearing:	Teleconference
Hearing date:	May 30, 2023
Hearing participants:	Appellant Respondent's representative
Decision date:	June 20, 2023
File number:	AD-23-288

Decision

[1] The appeal is allowed.

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 determined that the Claimant could have given Human Resources (HR) the time to try and assist him, rather than quitting right after speaking with them. After an unsuccessful reconsideration, the Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant quit his job. It found that he had a reasonable alternative to leaving his job. The General Division found that it would have been a reasonable alternative for the Claimant to stay on at his job until he secured a different job. The General Division concluded that the Claimant did not have just cause for leaving.

[4] The Appeal Division granted the Claimant leave to appeal. He submits that the General Division ignored evidence and made an error in law when it concluded that he did not have just cause to voluntary leave his job.

[5] I must decide whether the General Division ignored evidence and whether it made an error in law when it concluded that the Claimant did not have just cause to leave his job.

[6] I am allowing the Claimant's appeal.

Issue

[7] Did the General Division ignore evidence and make an error in law when it concluded that the Claimant did not have just cause to leave his job?

Analysis

Appeal Division's mandate

[8] 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]

[9] 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]

[10] 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.

Did the General Division ignore evidence and make an error in law when it concluded that the Claimant did not have just cause to leave his job?

[11] The Claimant submits that the General Division disregarded the evidence presented by his witness about his manager V. He submits that the General Division disregarded the fact that he was being asked by his employer to do his previous tasks and the work related to his new position as a general accountant. The Claimant submits that he discussed about the problem with his manager V and HR without success. He also looked for work before quitting. He submits he had no reasonable alternative but to leave when he did because nothing was being done about his work overload.

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

[12] The issue of whether someone has just cause to voluntarily leave an employment depends on whether they had no reasonable alternative to leaving, having regard to all the circumstances.

[13] The General Division determined that the Claimant's witness mainly spoke to the Claimant's character as a hard worker and was not able to speak much to the Claimant's work situation. It found that the fact that the Claimant may have been a hard worker did little to assist him in determining whether he had just cause for his voluntary leaving.

[14] After listening to the recording of the General Division hearing, I agree with the Claimant that the General Division ignored relevant parts of the testimony of his witness.

[15] The witness did speak about the Claimant's character but, with great respect, said much more than that. He testified that he was part of the accounting team, and that the Claimant's manager was also his manager. He indicated that she appeared underqualified for the position she was holding with the employer. The witness confirmed the Claimant's version that he was overwhelmed by his workload because he had been doing his old and new job for quite a while. The witness also testified that the excessive workload was still an issue in the accounting department.

[16] By ignoring the Claimant's evidence, the General Division also committed an error of law in its interpretation of section 29(c) of the *Employment Insurance Act* (EI Act).

[17] Contrary to the General Division findings, the evidence does not support a determination that the Claimant could simply stop doing overtime. His supervisor was increasingly demanding and interruptive, and he needed the extra working time to keep up the pace. Furthermore, asking that the Claimant secure other employment and to stay with the employer in this type of work environment goes against the requirements of section 29(c) of the EI Act.

[18] In view of these errors, I am justified to intervene.

Remedy

[19] Considering that the parties had the opportunity to present their case before the General Division, I will render the decision that should have been given by the General Division.[3]

[20] The preponderant evidence shows that the Claimant started working for his employer as a night auditor and eventually made it to the position of night supervisor. In the summer of 2022, his employer offered him the position of accounts receivable. The Claimant accepted the offer. However, there had not been a full-time employee in the position of accounts receivable for many months, only someone working part-time. When the Claimant started the new position, there was already a serious backlog.

[21] The Claimant's backlog was made worse by the fact that for the first couple weeks of taking the accounts receivable position he was required to keep on doing work from his previous position until it was filled. He was working overtime just to catch up.

[22] The Claimant's manager (V) kept piling more work on him, and he had difficulty trying to keep up with it all. He would ask her for help, but all she would ever do is tell him to manage his time better. This buildup of work, lack of help from V, and her constant interruptions to try and direct his work, led to the Claimant experiencing increasing amounts of stress.

[23] The Claimant went to speak to HR about his problems a couple of days before he quit. HR asked him what he needed, and he told them that he needed a clear and fixed job description and responsibilities, and to stick to his duty hours with no overtime. HR told him they could not guarantee a second person would be hired and to give them two weeks notice if he wanted to resign.

[24] On his last day of work, the Claimant was constantly being asked by V why he was not doing this or that task, and near the very end of his shift, she assigned him more work she wanted done that day. He told her again that the workload was too high,

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[3] Pursuant to section 59(1) of the *Department of Employment and Social Development Act*.

and he was stressed, but her only response was that he needed to manage his time better. He says he then told V he was quitting, as he realized that his working issues would never be solved.

[25] The Claimant's witness confirmed his version that he was overwhelmed and stressed by his excessive workload. The witness also testified that the excessive workload was still an issue in the accounting department.

[26] The testimony of the witness raises serious doubts about the employer's position to the effect that if they had known, they would have helped the Claimant and would have provided him with resources.

[27] The preponderant evidence shows that the Claimant left his employment because the employer made significant changes to his work duties. He accepted the new accounting position but was later asked to perform for quite a while is old job at the same time. This created a serious backlog in his new position. He tried to keep up but could no longer follow the constant additions to his work duties and the increasing demands of his manager. When asked, HR did not cooperate to clarify his job description and responsibilities.

[28] Did the Claimant have reasonable alternatives to leaving his employment?

[29] I am of the view that the Claimant's voluntary leaving was the only reasonable alternative in his situation. The preponderant evidence supports the Claimant and the witness account that the employer had no intention of changing its employees' working conditions. He tried to get help from his manager and HR but was unsuccessful. He looked for another job before leaving the one he had. Going to a doctor or asking for a temporary leave would not have changed his working conditions upon his return.

[30] I am of the view that, when considering all the circumstances of this case, the Claimant had just cause to leave his employment when he did.

Conclusion

[31] The appeal is allowed.

Pierre Lafontaine
Member, Appeal Division