[TRANSLATION]

Citation: *AL v Canada Employment Insurance Commission*, 2023 SST 1443

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	A. L.
Respondent:	Canada Employment Insurance Commission
Representative:	Julie Meilleur

Decision under appeal:	General Division decision dated June 2, 2023 (GE-22-1520)

Tribunal member:	Pierre Lafontaine
Type of hearing:	In person
Hearing date:	October 13, 2023
Hearing participants:	Appellant Respondent's representative
Decision date:	November 3, 2023
File number:	AD-23-629

Decision

[1] The appeal is allowed. The Claimant had just cause for voluntarily leaving his job.

Overview

[2] The Appellant (Claimant) worked as a mechanic in northern Canada. He left his job and applied for Employment Insurance benefits. The Respondent (Commission) looked at the reasons for his separation from employment and decided that he was let go.

[3] The Claimant asked the Commission to reconsider. The Commission changed its mind; it decided that the Claimant voluntarily left (or chose to quit) his job without just cause, so it was not able to pay him benefits. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant voluntarily left his job to be closer to his son, who was having behavioural problems in school. It found that being there for his son was not an obligation but something the Claimant wanted to do. It found that he could have looked for other work before leaving his job, asked his employer for unpaid leave, or sought help from a health professional. The General Division decided that he did not have just cause for leaving his job.

[5] The Claimant was given permission to appeal. He says that the General Division made an error of law when it found that he did not have just cause under the law for leaving his job.

[6] I have to decide whether the General Division made an error of fact and an error of law in its interpretation of section 29(c)(v) of the *Employment Insurance Act* (EI Act).

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

Issue

[8] Did the General Division base 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, and did it make an error in its interpretation of section 29(c)(v) of the EI Act?

Analysis

Appeal Division's mandate

[9] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.[1]

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

[11] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or 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, the Tribunal must dismiss the appeal.

Preliminary remarks

[12] It is well established that I have to consider only the evidence that was before the General Division. This is because a hearing before the Appeal Division is not a new opportunity to present evidence. The powers of the Appeal Division are limited by law.[2]

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[1] See *Canada (Attorney General) v Jean*, 2015 FCA 242; and *Maunder v Canada (Attorney General)*, 2015 FCA 274.
[2] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

Did the General Division base 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, and did it make an error in its interpretation of section 29(c)(v) of the EI Act?

[13] The Claimant argues that the evidence before the General Division shows that he had an obligation to care for his child, not just a desire. He argues that his presence had a direct impact on his son, who stopped missing school. He says that the General Division made an error of law in its interpretation of section 29(c)(v) of the EI Act.

[14] The General Division had to decide whether the Claimant had just cause for voluntarily leaving his job when he did.

[15] Just cause for voluntarily leaving a job exists if the claimant had no reasonable alternative to leaving, considering all the circumstances.

[16] The General Division found that the Claimant left his job. The evidence shows that his job did end at his request.

[17] The Claimant explained that, before he started working for the employer on August 17, 2021, he had shared custody of his teenage son. His son would spend one week at his place and the following week at his mother's.

[18] After he started working in a remote area, his work schedule was 14 days on and 7 days off at home. It would take a day to travel to the work site and get back. So, he was away for 16 out of 21 days. During his absence, his son lived with his mother.

[19] The Claimant argued that, after he started working in a remote area, the mother told him that their son had been having unusual behavioural problems in school since the beginning of the school year. He was kicked out of class two to three times a week. He seemed on the verge of being kicked out of his sports-study program. He seemed to have a difficult relationship with his stepfather.

[20] The General Division noted that the Claimant's son really was experiencing significant difficulties in school, having been kicked out of class seven times between October 14, 2021, and November 11, 2021.

[21] The General Division found that the Claimant had not shown that he had an obligation to care for his son. The child's mother was around and available to care for him. The Claimant just wanted to be close to his son.

[22] In my view, 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.

[23] The Claimant was told about his son's problems by his son's mother. Their son was regularly kicked out of class. This coincided with the father's leaving to work in a remote area. It is clear from the evidence that the child's mother was unable to stop him from getting kicked out of class and that she told his father as much. This means that the father had to intervene; he did not just want to be closer to his child.

[24] To satisfy the provisions of the EI Act, the Claimant had to prove, on a balance of probabilities, that when he left his job, his child's situation required him to be there right away to care for him. He has clearly met his burden of proof.

[25] Even though it had to consider the facts when the Claimant decided to leave his job, the General Division noted that the father's presence seemed to have had the **desired effect** on the son's **well-being**. He stopped missing school.

[26] Given this error, I find that the General Division also made an error of law in its interpretation of section 29(c)(v) of the EI Act. This is not a case where the Claimant tried to be closer to his child when he was already being properly cared for by the other parent.

Remedy

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

[28] This case provides me with an excellent opportunity to talk about how the Commission and some General Division members often interpret section 29(c) of the EI Act too narrowly and too harshly. A claimant has the burden of proving that they had **no reasonable alternative** to leaving their job **considering all the circumstances** of their case, not that their only option was to quit.

[29] In this case, the evidence shows, on a balance of probabilities, that the Claimant had no reasonable alternative to leaving his job to care for his child.

[30] The evidence shows that the Claimant was told about his son's problems by his son's mother. Their son was regularly kicked out of class. This coincided with the father's leaving to work in a remote area. It is clear from the evidence that the child's mother was unable to stop him from getting kicked out of class and that she told his father as much. This means that the father had to intervene; he did not just want to be closer to his child.

[31] The Claimant is unionized and cannot look for another job as he wishes while working in the Far North. When he decided to leave his job, he had almost no days off and could not wait for his son's situation to get even worse. The Claimant had no close relatives. It was pointless to ask for unpaid leave, since he could not be transferred closer to home, and going back to work in a remote area was not appropriate given his son's behavioural problems when he was not around. The Claimant also did not need to get a medical note to intervene, because his son was clearly struggling.

[32] In the particular circumstances of this case, I find that the Claimant had just cause for voluntarily leaving his job.

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

[33] For the reasons I mentioned, the Claimant's appeal should be allowed.

Conclusion

[34] The appeal is allowed. The Claimant had just cause for voluntarily leaving his job.

Pierre Lafontaine
Member, Appeal Division