Citation: *LC v Canada Employment Insurance Commission*, 2023 SST 1310

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	L. C.
Respondent:	Canada Employment Insurance Commission
Representative:	Isabelle Thiffault

Decision under appeal:	General Division decision dated April 17, 2023 (GE-23-202)

Tribunal member:	Neil Nawaz
Type of hearing:	In Writing
Decision date:	October 2, 2023
File number:	AD-23-395

Decision

[1] The appeal is dismissed. The General Division made an error of law in coming to its decision. My own review of the evidence convinces me that the Claimant is not entitled to Employment Insurance (EI) benefits.

Overview

[2] The Claimant, L. C., worked as a design engineer for X, a manufacturer of industrial machinery. In March 2022, one of X's technicians resigned, and the Claimant was asked to fulfill additional duties until a replacement could be found. The Claimant says that he soon found himself spending 50 percent of his time performing tedious and repetitive tasks well below his skill level.

[3] After eight weeks, the Claimant asked his superiors if he could be relieved of his additional duties so that he could devote all his time to the job he was hired to do. The request was refused. Two weeks later, on June 1, 2022, he resigned from his position, claiming constructive dismissal.

[4] The Claimant applied for Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. The Commission decided that the Claimant had voluntarily left his job without just cause, so it didn't have to pay him benefits. The Claimant appealed the Commission's decision to the Social Security Tribunal's General Division.

[5] The General Division held a hearing by videoconference and agreed with the Commission. It found that the Claimant had reasonable alternatives to leaving when he did. It found, among other things, that the Claimant could have kept working until he found another job, or he could have sought a medical opinion confirming that his new duties were affecting his mental health.

[6] The Claimant is now seeking permission to appeal the General Division's decision to the Appeal Division. He alleges that, in coming to its decision, the General made the following errors:

- It found that the changes to his work duties were not significant because they would "not last forever." The Claimant says that nothing lasts forever, and that, in any case, his superiors clearly indicated that his additional workload would be indefinite.
- It found that he did not talk to his superiors before quitting and that he could have asked them for permission to do less of the technician's work. The Claimant says that he did just those things in an email dated May 18, 2022.
- It found that he had a range of options other than quitting his job, such as asking for leave and getting a doctor's report. The Claimant says that, as the General Division itself acknowledged, his employer almost certainly would not have granted him leave.

[7] Earlier this year, I granted the Claimant permission to appeal because I thought he had raised at least an arguable case. At the Claimant's request, I did not hold an oral hearing but, instead, decided his appeal based on a review of the documents already on file.

Issue

[8] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important factual error.[1]

[1] See *Department of Employment and Social Development Act* (DESDA), section 58(1).

[9] My job is to determine whether any of the Claimant's allegations fall into the permitted grounds of appeal and, if so, whether they have any merit.

Analysis

[10] I am satisfied that the General Division based its decision an important factual error — specifically, its finding that the Claimant could have asked his employer for a leave of absence. Because the General Division's decision falls for this reason alone, I see no need to address the Claimant's remaining allegations.

The General Division contradicted itself about the Claimant's ability to take leave from his job

[11] As the General Division correctly noted, you can still be eligible for EI benefits even if you left your job voluntarily — provided you had "just cause" to do so.[2] However, you have to prove that you had no reasonable alternative to leaving your job. Having a good reason for leaving isn't enough to prove just cause.

[12] In its reasons, the General Division listed several reasonable alternatives that were available to the Claimant instead of leaving his job. Among them, the General Division found that the Claimant "could have asked his employer for a leave and got a doctor's report saying his mental health was affected by doing the technician's work."[3] However, the General Division had already agreed that leave was out of the question:

> The Claimant says the employer would not have allowed him to take a leave of absence. **I agree with him that his employer would not have let him take a leave.** They needed a technician. They were having trouble hiring one. They needed the Claimant to do some of the technician's work. They would not want him to take a leave [emphasis added].[4]

[2] See section 30 of the *Employment Insurance Act*.
[3] See General Division decision, paragraph 39.
[4] See General Division decision, paragraph 38.

[13] On the face of it, this was a contradiction. It may be that, in the General Division's mind, there was a distinction between "leave" (taking a morning or afternoon off to get a doctor's report) and "leave of absence" (taking an extended period off to recuperate from a serious illness). If so, the General Division should have made that distinction clear.

[14] The Supreme Court of Canada has said that administrative decisions must be "based on an internally coherent and rational chain of analysis."[5] In a similar vein, the Federal Court of Canada requires decision-makers to make their reasons intelligible and transparent so that "the basis for a decision … is understandable, with some discernible logic."[6]

[15] In my view, the General Division's decision lacks internal coherence and discernable logic because it failed to adequately explain how the Claimant could be expected to take time off to address his mental health issues if his employer wasn't going to give him leave.

Remedy

There are two ways to fix the General Division's error

[16] When the General Division makes an error, the Appeal Division can address it by one of two ways: (i) it can send the matter back to the General Division for a new hearing or (ii) it can give the decision that the General Division should have given.[7]

[17] As it conducts its proceedings, the Tribunal must balance simplicity, fairness, and quickness.[8] In addition, the Federal Court of Appeal has stated that a decision-maker should consider the delay in bringing applications for benefits to conclusion. It is more than a year since the Claimant applied for EI benefits. If this matter goes back to the General Division, it will needlessly prolong a final resolution.

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[5] *See Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85.
[6] See *Canada (Attorney General) v Redman*, 2020 FC 1093 at paragraph 44, quoting with approval *Vancouver Airport Authority v PSAC*, 2010 FCA 158, [2011] 4 FCR 425.
[7] See DESDA, section 59(1).
[8] See *Social Security Tribunal Rules of Procedure*, section 8(1).

The record is complete enough to decide this case on its merits

[18] I am satisfied that the record is complete. I have before me a large volume of written evidence, including emails, letters, and transcripts of phone conversations, documenting the circumstances that led to the Claimant's departure. I also had access to the recording of the General Division hearing, in which the Claimant discussed his job, as well as the additional duties that his employer imposed on him after the departure of a technician. I doubt that the Claimant's evidence would be materially different if this matter were reheard.

[19] As a result, I am in a position to assess the evidence that was available to the General Division and to give the decision that it should have given, if it hadn't erred. In my view, even if the General Division had properly assessed the evidence, it would have come to the same result. My own review of the record satisfies me that the Claimant's appeal can't succeed.

The Claimant did not have just cause to quit his job

[20] The Claimant argues that he did not quit his job but was constructively dismissed. He maintains that he had no alternative but to leave because his employer had materially changed his duties without his consent.

[21] However, when deciding whether the Claimant voluntary left his job, I have to look at whether he had a choice to stay or leave.[9] In my view, the Claimant had a choice. He could have continued to work for his employer, albeit in less-than-ideal circumstances. Instead, he decided to leave. This means that the Claimant left his job voluntarily.

– Just cause exists when there is no reasonable alternative to quitting

[22] The law says that you have just cause if you have no reasonable alternative to quitting your job. It says that you have to consider all the circumstances.[10]

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[9] See *Canada (Attorney General) v Peace,* 2004 FCA 56.
[10] See *Canada (Attorney General) v White*, 2011 FCA 190.

[23] It is up to claimants to prove that, on a balance of probabilities, they had just cause to leave. This means that they have to show that, more likely than not, their only reasonable option was to quit.

[24] When I decide whether a claimant had just cause, I have to look at all of the circumstances that existed when they quit. The law says that those circumstances can include significant changes in a claimant's work duties.[11]

– X temporarily imposed new duties on the Claimant without extra pay

[25] The Claimant says that he had no choice but to quit X after his superiors gave him additional duties when another employee suddenly resigned. Having looked at the circumstances leading up to his resignation, I find that the Claimant had reasonable alternatives to quitting when he did.

[26] In my view, the changes to the Claimant's job, while undoubtedly inconvenient, were not significant. That is because the changes were not permanent. X gave the Claimant an additional workload at no extra pay, but the evidence shows it was making an effort to find a replacement for the departed employee.

[27] The Claimant is a professional engineer. At X, he worked as a design engineer. His job was to develop new products and make detailed drawings of the parts needed to make them.

[28] On March 3, 2022, a technician quit. The Claimant's boss told him that he and another employee would have to assume the technician's duties until a new technician could be hired. His boss also told him that, if he did not perform his share of the duties, he would be fired or would have to quit.

[29] The Claimant started doing the additional duties on or about March 14, 2022. In addition to his regular duties, he had to

- download and save orders;

[11] See section 29(c) of the EI Act.

- print, mark up, and file hard copies of existing drawings;
- searching for documents in a disorganized hard copy filing system and to re-create them if they couldn't be found; and
- make minor changes existing 2D Drawings with AutoCAD.[12]

[30] Since many of these duties could not be performed remotely, the Claimant had to come to the office for about 12 hours a week. That meant his wife, who had an online job of her own, often had no one to help her mind their children. After eight weeks, the Claimant found himself more than 50 percent of his time on the additional duties, while having to maintain his regular design work too.

[31] The Claimant first complained to his boss in an email dated May 18, 2022. The Claimant said his additional duties were tedious and beneath his skill level. He said that the new work duties affected his self-esteem. He told his employer he wanted to go back to spending 100 percent of his time on his design engineer job.

[32] The Claimant's boss replied on May 19, 2022. He said that they were interviewing people and were optimistic they would find a replacement technician. But he also said that they were a small company. If someone left, that meant everyone would have to take on more work.

[33] On May 27, 2022, the Claimant inquired about the interviews. On May 30, 2022, his boss told the Claimant they had not hired anyone yet, because none of the interviewees was qualified for the position. He added that they continued to look for more applicants and had asked the recruiter for more leads.

[34] The Claimant suspected that X wouldn't be able to find someone for a long time, if ever. He spoke to a lawyer, who told him that, if he kept on working, he would be in effect agreeing to the additional work duties. The lawyer also told the Claimant that he would have to quit if he wanted to bring a claim for constructive dismissal. On June 1,

[12] See Claimant's written submissions dated September 7, 2023, AD04.

2022, the Claimant resigned from his job. He said that his role had been downgraded and that he had not agreed to the additional duties.

– The Claimant had reasonable alternatives to quitting when he did

[35] To show just cause, a claimant "doesn't have to show that he exhausted every possible alternative, nor does he have to show that his working conditions were so intolerable that he had no choice but to quit immediately."[13]

[36] However, there were at least three other things that the Claimant could have done, rather than quitting his job when he did:

- He could have kept working for X while looking for another job;
- He could have rejected his lawyer's advice and stayed on the job under formal written protest; and
- He could have kept doing the additional duties until his employer hired a new technician.

[37] None of these alternatives was ideal, but the law doesn't allow potential EI claimants to quit simply because working conditions are less than perfect. X may well have been taking advantage of the Claimant, but that doesn't mean he had no other option than to leave his job.

[13] See *Chaoui v Canada (Attorney General)*, 2005 FCA 66.

Conclusion

[38] The General Division contradicted itself while failing to offer adequate reasons for its decision. However, I think the General Division would have come to the same decision even if it had not made those errors. Having conducted my own review of the record, I have concluded that, for the purpose of determining EI entitlement, the Claimant had reasonable alternatives to quitting his job when he did.

[39] The appeal is dismissed.

Neil Nawaz
Member, Appeal Division