



Citation: *Canada Employment Insurance Commission v HC*, 2023 SST 1379

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Ian McRobbie (counsel)

**Respondent:** H. C.  
**Representative:** David Regini (paralegal) and Jasmine Singh (counsel)

---

**Decision under appeal:** General Division decision dated April 24, 2023  
(GE-22-3805)

---

**Tribunal member:** Janet Lew

**Type of hearing:** Teleconference  
**Hearing date:** September 7, 2023  
**Hearing participants:** Appellant  
Appellant's representatives  
Respondent's representative

~~**Decision date:** October 11, 2023~~  
**CORRIGENDUM DATE:** **October 20, 2023**

**File number:** AD-23-446

## Decision

[1] The appeal is allowed.

[2] The Claimant did not have just cause for having voluntarily left her employment on May 12, 2022. She is disqualified from receiving Employment Insurance benefits after this date.

## Overview

[3] The Appellant, Canada Employment Insurance Commission (Commission) is appealing the General Division decision.

[4] The General Division found that the Respondent, H. C. (Claimant), had been suspended from her employment because of misconduct. She had not complied with her employer's vaccination policy. This meant that she was disentitled from receiving Employment Insurance benefits during her suspension from March 8, 2022 to May 12, 2022. The Commission accepts the General Division's decision that the Claimant was disentitled because of her misconduct for this timeframe.

[5] The General Division also found that the Claimant had just cause for voluntarily leaving her job on May 12, 2022. While under suspension, the Claimant retired so she could access her pension and continue financially supporting her family. Having found that the Claimant had just cause meant that she was not disqualified from receiving Employment Insurance benefits. It is this aspect of the General Division's decision that the Commission is seeking to appeal.

[6] The Commission argues that the General Division made legal and factual errors. The Commission argues that the General Division failed to follow section 29(c) of the *Employment Insurance Act*, as well as established case law, in determining whether the Claimant had just cause. The Commission argues that leaving one's employment for financial reasons does not constitute just cause under the *Employment Insurance Act*.

[7] The Commission asks the Appeal Division to allow the appeal and give the decision that it says the General Division should have given. The Commission argues that the Appeal Division should find that the Claimant was not entitled to Employment Insurance benefits either after she retired.

[8] The Claimant argues that the General Division did not make any mistakes. The Claimant says the General Division's findings are supported by the law and consistent with the evidence before it. The Claimant asks me to dismiss the appeal.

## **Preliminary matters**

[9] The Claimant intended to give evidence at the hearing of this appeal. She denied that she would be giving any new evidence that she had not already given at the General Division hearing. She hoped to reaffirm her original testimony.

[10] Evidence given for this reason is inappropriate at the Appeal Division. Besides, there was a record of the Claimant's testimony from which she could draw. I gave the parties time to provide me with any timestamps from the audio recording of the General Division hearing that they wish to use to support their arguments.

## **Issue**

[11] Did the General Division make a legal error when it found that the Claimant had just cause to voluntarily leave her employment?

## **Analysis**

[12] The Appeal Division may intervene in General Division decisions if the General Division made any jurisdictional, procedural, legal, or certain types of factual errors.<sup>1</sup>

[13] For factual errors, the General Division had to have based its decision on that factual error, and it had to have made that finding in a perverse or capricious manner or without regard for the material before it.

---

<sup>1</sup> Section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

## **Did the General Division make a legal error when it found that the Claimant had just cause to voluntarily leave her employment?**

[14] The Commission argues that the General Division made a legal error when it found that the Claimant had just cause to voluntarily leave her employment.

### **– The General Division decision**

[15] The General Division found that, having considered all of the circumstances that existed, the Claimant had just cause when she retired and voluntarily left her employment.

[16] The General Division found that the Claimant was “put in the impossible situation of remaining on leave, and being unable to feed her family and keep a roof over their heads, or renouncing what [the General Division member] decided, based on the evidence ..., were sincerely held religious beliefs by getting vaccinated.”<sup>2</sup>

[17] Some of the Claimant’s children and grandchildren, as well as a great grandson, ranging in age from five to 51 years of age, live with her. The Claimant testified that several of them have physical and mental disabilities. Her son is developmentally delayed, and others have mental health issues, including anxiety, panic attacks, and suicidal ideation. She financially and emotionally supports them. She also cares for and looks after them, such as taking them to medical appointments or doing their shopping.<sup>3</sup>

[18] The General Division found that retiring was a last resort for the Claimant. She had sought an exemption from her employer’s vaccination policy. She sought her union’s help and filed a grievance under her collective agreement to challenge her suspension from work. Once suspended, she diligently looked for other work.

[19] The General Division found that the Claimant exhausted all reasonable alternatives in the circumstances. It found that she had just cause to retire when she

---

<sup>2</sup> General Division decision, at para 104.

<sup>3</sup> At approximately 19:58 to 23:30 of the audio recording of the General Division hearing.

did, as it was “the only way she could stay true to her sincerely held religious beliefs and continue to support her family.”<sup>4</sup>

– **The Commission’s arguments**

[20] The Commission argues that the General Division’s analysis was flawed. The Commission says the General Division mistakenly considered the facts relating to the Claimant’s suspension to justify her retirement. The Commission argues that these facts were irrelevant to the voluntary leaving and just cause considerations. Ultimately, the Claimant remained employed.

[21] The Commission argues that having just cause means that a claimant has no reasonable alternatives but to leave their employment, considering all of the circumstances. The Commission notes that section 29(c) of the *Employment Insurance Act* provides a list of potentially relevant circumstances. It is not an exhaustive list.

[22] The Commission accepts that the General Division properly examined all of the Claimant’s circumstances in this case. However, the Commission argues that establishing just cause is a high threshold to meet because the *Employment Insurance Act* is intended to compensate those who have lost their employment involuntarily, not for those who voluntarily leave their employment.

[23] The Commission argues that having good reasons for leaving one’s employment is alone insufficient. The Commission says that leaving a job for financial reasons, as the Claimant did, does not meet the test for just cause.

[24] The Commission notes that the Federal Court of Appeal considered this very issue in a case called *Campeau*.<sup>5</sup> There, the Court held that “sincerity and inadequate income do not constitute just cause ... allowing [that claimant] to leave her employment in making the Employment Insurance system bear the cost of supporting her.”<sup>6</sup>

---

<sup>4</sup> General Division decision, at para 109.

<sup>5</sup> *Canada (Attorney General) v Campeau*, 2006 FCA 376.

<sup>6</sup> *Campeau*, at para 21.

[25] The Commission says that the Court of Appeal has reaffirmed these principles several times: in *Richard*,<sup>7</sup> *Murugaiah*,<sup>8</sup> *Lapointe*,<sup>9</sup> and *Graham*,<sup>10</sup> to cite some examples. Mr. Richard left his employment for a seasonal job in another field where he could improve his financial situation. The Court of Appeal wrote:

[13] The Board of Referees erred when it accepted a worker's desire to improve his or her financial situation as just cause for voluntarily leaving an employment.

[14] Case law is nonetheless clear on this issue, and the [Commission] has complained that it was not followed. How many times does it have to be repeated before umpires understand and the Chief Umpire ensures that they have understood? However noble and legitimate the desire to improve one's lot may be, this desire is not, for the purposes of sections 29 and 30 of the [Employment Insurance] Act, a legal justification for voluntarily leaving one's employment.

[Emphasis added.]

[26] Mr. Murugaiah left two jobs to move to another city to look for work suitable to his recent training. Ms. Lapointe left her employment to significantly improve her working conditions in a region where permanent jobs were few and far between. Similarly, Mr. Graham left his part-time employment after the school term was over. He returned home to look for full-time summer employment and save on living expenses.

[27] In each case, the claimants left their employment for more favourable economic conditions. The Federal Court of Appeal held that a claimant's desire to improve their financial situation may constitute good cause, but it does not constitute just cause.<sup>11</sup>

[28] The Commission notes that decisions from the Social Security Tribunal, such as *D.G.*,<sup>12</sup> *C.B.*,<sup>13</sup> and *J.T.*<sup>14</sup> have adopted the Court's reasoning. *C.B.* left her employment

---

<sup>7</sup> *Canada (Attorney General) v Richard*, 2009 FCA 122.

<sup>8</sup> *Canada (Attorney General) v Murugaiah*, 2008 FCA 10.

<sup>9</sup> *Canada (Attorney General) v Lapointe*, 2009 FCA 147.

<sup>10</sup> *Canada (Attorney General) v Graham*, 2011 FCA 311 at para 7.

<sup>11</sup> *Canada (Attorney General) v Graham*, 2011 FCA 311 at para 7.

<sup>12</sup> *D.G. v Canada Employment Insurance Commission*, 2022 SST 759 at paras 93, 97 to 99.

<sup>13</sup> *Canada Employment Insurance Commission v C.B.*, 2017 SSTADEI 18.

<sup>14</sup> *J.T. v Canada Employment Insurance Commission*, 2018 SST 1179 at para 35.

because she could no longer afford rent and felt her only option was to move to a more affordable province. The Appeal Division found that C.B. had not shown just cause within the meaning of the *Employment Insurance Act*.

[29] Finally, the Commission argues that the General Division erred by failing to consider that finding just cause in circumstances similar to those facing the Claimant would be effectively allowing claimants to escape any consequences for their misconduct. This would defeat the purpose of disqualification under section 30 of the *Employment Insurance Act*. It would also undermine the purpose of the *Employment Insurance Act*, which is to support those who have lost their jobs through no fault of their own, are truly unemployed, and who are seriously engaged in an earnest effort to find work.<sup>15</sup>

– **Claimant`s arguments**

[30] The Claimant argues that her employer constructively dismissed her for practising her religious and spiritual beliefs and for seeking accommodation from its vaccination policy. The Claimant rejects COVID-19 vaccines as her beliefs dictate that the only medicine she can receive are those of the Creator, as they are pure. She claims that her employer's requirements to undergo vaccination forced to leave her employment on May 12, 2022.<sup>16</sup>

[31] The Claimant argues that her employer should have given her an accommodation. She had already been working remotely from home since 2012 due to an auto-immune condition.

[32] The Claimant argues that, unlike her colleagues, she could not remain on suspension from work because of her “unique financial hardship, vulnerability [as a[n **Indigenous**] ~~First Nations~~-woman] and had no other reasonable alternative.”<sup>17</sup> It caused her and her family significant anxiety and stress. She and her family worried about how

---

<sup>15</sup> Commission's submissions, at AD4-34.

<sup>16</sup> Claimant's submissions, at AD 3-4 to AD 3-5, at paras 6 to 13.

<sup>17</sup> Claimant's submissions, at AD 3-8 at para 29.

where they would live and whether they would end up homeless if she could not meet the mortgage payments, along with other financial commitments.<sup>18</sup>

[33] The Claimant also testified that she felt she had to retire, in part, because her employer disrespected her religious and spiritual beliefs.<sup>19</sup>

[34] Had it not been for these considerations, the Claimant says that she would have remained on a leave of absence indefinitely.<sup>20</sup>

– **My findings**

[35] The Claimant argues that her employer constructively dismissed her, leaving her with no alternative but to retire. This falls beyond the Tribunal's jurisdiction to address. The Claimant's options to pursue any remedies for wrongful dismissal lie elsewhere.

[36] As for the issue of the voluntary leaving, the Claimant has not referred me to any supporting case law, other than to *Borden*<sup>21</sup> and *Campeau*. She says that it is clear from *Campeau* that the General Division had to consider all of the Claimant's circumstances, which she says that it did.

[37] I do not find the *Borden* decision particularly relevant. It addressed the question about whether Mr. Borden had involuntarily left his employment because he had been incarcerated. The Federal Court of Appeal found that Mr. Borden's employment had been terminated. He lost his job because he could no longer fulfil an essential condition of his employment contract because of his own misconduct.

[38] I find that the *Campeau* decision overall does not assist the Claimant. The Federal Court of Appeal makes it clear that inadequate income from one's existing employment does not represent just cause to leave that employment.

---

<sup>18</sup> At approximately 44:40 to 45:08 of the audio recording of the General Division hearing.

<sup>19</sup> At approximately 57:35 of the audio recording of the General Division hearing.

<sup>20</sup> At approximately 1:10 to 1:11 of the audio recording of the General Division hearing.

<sup>21</sup> *Canada (Attorney General) v Borden*, 2004 FCA 176.



[39] The law is well established that leaving one's employment to improve their financial situation may well constitute good cause, but it does not constitute just cause. That was the situation that the Claimant faced. There is no doubt that she was left in a precarious financial position once her employer placed her on a leave of absence. She risked losing her home. She is the sole provider for several dependents with varying impairments. She was under enormous strain and financial pressure, so felt forced to retire to access her pension.

[40] However, these considerations do not meet the test for just cause under section 29(c) of the *Employment Insurance Act*.

[41] The General Division made a legal error when it found that the Claimant had just cause to voluntarily leave her employment. Leaving one's employment for financial reasons is not just cause under the *Employment Insurance Act*. The General Division failed to address or heed the jurisprudence establishing this fundamental principle.

## **Remedy**

[42] The General Division failed to follow the established jurisprudence on the issue of voluntary leaving. To remedy this error, I can send the appeal back to the General Division for reconsideration or I can give the decision that the General Division should have given.

[43] The Commission asks me to give the decision that it says the General Division should have given. I agree this is the appropriate remedy. The evidence is uncontested and I find the evidence before me allows me to give the decision that the General Division should have given. There is no compelling reason to return this matter to the General Division.

[44] There was some suggestion that returning the matter to the General Division would give the Claimant the chance to elicit more evidence. This evidence apparently would help to establish that the Claimant had undertaken an earnest job search before she retired.

[45] However, as the Commission rightfully notes, the Claimant should have elicited this evidence previously. The fact that she did not already produce evidence to show the extent of her job search efforts was through no fault of the General Division. And, on top of this, at this point, it seems only speculative that such evidence might even exist.

[46] The law is clear that leaving one's employment to improve their financial situation does not constitute good cause.

## **Conclusion**

[47] The appeal is allowed.

[48] The Claimant did not have just cause for having voluntarily left her employment on May 12, 2022. She is disqualified from receiving Employment Insurance benefits after this date.

Janet Lew  
Member, Appeal Division