



Citation: *DM v Canada Employment Insurance Commission*, 2023 SST 1663

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: D. M.

Respondent: Canada Employment Insurance Commission
Representative: Josée Lachance

Decision under appeal: General Division decision dated June 8, 2023
(GE-23-3)

Tribunal member: Solange Losier

Type of hearing: Teleconference

Hearing date: November 9, 2023

Hearing participants: Appellant
Respondent's representative

Decision date: November 21, 2023

File number: AD-23-593

Decision

[1] The appeal is allowed. The General Division made errors of law. The matter will go back to the General Division for reconsideration.

Overview

[2] D. M. is the Claimant in this case. He worked at a farm and applied for Employment Insurance (EI) regular benefits.

[3] At first, the Canada Employment Insurance (Commission) decided that the Claimant was allowed to get Employment Insurance (EI) benefits, but they changed their decision after his employer asked for a reconsideration.¹ The Commission then decided that the Claimant voluntarily left his job without just cause, so he couldn't get EI benefits.²

[4] The General Division concluded the same.³ It found that the Claimant voluntarily left his job without just cause. It said there were reasonable alternatives. The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division.⁴

[5] The Claimant and Commission agree that the General Division made an error of law for two reasons.⁵ First, it did not decide whether the Claimant had been harassed at work.⁶ Second, it did not consider whether a different section in law applied because when the Claimant left his job, his work contract was expected to end soon.⁷

¹ See pages GD3-22 to GD3-25.

² See reconsideration decision at pages GD3-44 to GD3-46 and section 30(1) of the *Employment Insurance Act* (EI Act).

³ See General Division decision at pages AD1A-1 to AD1A-8.

⁴ See Application to the Appeal Division at pages AD1-1 to AD1-9; AD1B-1 and AD1C-1.

⁵ See Commission's arguments at pages AD4-1 to AD4-5 and section 58(1)(b) of the *Department of Employment and Social Development*.

⁶ See section 29(c)(i) of the EI Act.

⁷ See section 30(1) of the EI Act imposes an indefinite disqualification to EI benefits and section 33(1) of the EI Act imposes a disentitlement to EI benefits.

[6] I agree that the General Division made an error of law for the above reasons, so I am allowing the appeal.⁸ The file will be returned to the General Division for reconsideration.⁹

Issues

[7] Did the General Division make an error of law by not deciding the issue of harassment?

[8] Did the General Division make an error of law when it did not consider whether a disentitlement to EI benefits was applicable instead of a disqualification to EI benefits?

[9] If there was an error, how should I fix it?

Analysis

[10] An error of law can happen when the General Division doesn't apply the correct law or when it uses the correct law but misunderstands what it means or how to apply it.¹⁰

– Voluntary leaving without just cause

[11] The *Employment Insurance Act* (EI Act) says a claimant is not entitled to get EI benefits if they voluntarily leave their employment without just cause.¹¹ This is called a “disqualification” to EI benefits.

[12] A claimant has just cause for voluntarily leaving their job if, having regard to all the circumstances, they had no reasonable alternative to quitting.¹² The law provides a list of relevant circumstances, which includes sexual or other harassment.¹³

⁸ See section 58(1)(b) of the DESD Act.

⁹ See section 59(1) of the DESD Act.

¹⁰ See section 58(1)(b) of the DESD Act.

¹¹ See section 30(1) of the EI Act.

¹² See section 29(c) of the EI Act.

¹³ See section 29(c)(i) of the EI Act.

[13] To show just cause, the Claimant has to show that, having regard to all the circumstances, on a balance of probabilities, he had no reasonable alternative to leaving his job.¹⁴

– **Anticipated loss of employment**

[14] However, there is another section in the EI Act that applies when a claimant voluntarily leaves their job before an anticipated loss of employment. It results in a “disentitlement” to EI benefits (not a disqualification) and lasts until the set term expires or the date of lay off according to a notice already given by the employer to a claimant.¹⁵

– **The General Division decided that the Claimant didn’t have just cause to leave his job, so he was disqualified from getting EI benefits**

[15] As noted above, the Commission decided that the Claimant voluntarily left his job without just cause, so it imposed an indefinite disqualification to EI benefits from June 26, 2022.¹⁶

[16] The General Division decided that the Claimant voluntarily left his job.¹⁷ It said that the Commission and Claimant agreed that he stopped going to work before the work season was scheduled to end.¹⁸

[17] The General Division wrote that it had to look at all the circumstances that existed at the time the Claimant quit.¹⁹ It identified that the law sets out some of the relevant circumstances it had to look at.²⁰

[18] Following that, it said that after it decides which circumstances apply, the Claimant has to show that he had no reasonable alternative to leaving at the time.²¹

¹⁴ See *Canada (Attorney General) v White*, 2011 FCA 190, at paragraph 3.

¹⁵ See sections 33(1) and 33(2) of the EI Act.

¹⁶ See reconsideration decision at pages GD3-44 to GD3-45 and section 30(1) of the EI Act.

¹⁷ See paragraph 10 of the General Division decision.

¹⁸ See paragraph 11 of the General Division decision.

¹⁹ See paragraph 16 of the General Division decision.

²⁰ See paragraph 16 of the General Division decision.

²¹ See paragraph 17 of the General Division decision.

– **The parties agreed that the General Division made errors of law**

[19] At the Appeal Division hearing, the parties agreed that the General Division made an error of law when it didn't make any findings about whether the Claimant was harassed at work.

[20] The General Division's decision shows that it was aware of the circumstances that existed when the Claimant left his job.²² It acknowledged the Claimant's allegations that his employer was calling him the "smart" one, gave him a face and kept telling him he wouldn't be hired back next year.²³

[21] The decision also identifies that the Claimant was alleging his employer retaliated against him because he had applied for EI benefits when his hours were reduced.²⁴ The file also indicates that the Claimant previously told the Commission he was being harassed by his employer.²⁵

[22] I agree with the parties. The General Division made an error of law when it didn't make any findings on whether the Claimant was being harassed by his employer.²⁶ Harassment is one of the relevant circumstances set out in law.²⁷ So, before moving to the reasonable alternative analysis, the General Division needed to first decide if the Claimant was being harassed by the employer.

[23] The parties also agreed that the General Division made an error of law when it didn't consider that the Claimant left his job shortly before his work season was scheduled to end.

[24] The General Division acknowledged in its decision that the Claimant stopped working before his season was expected to end.²⁸

²² See paragraph 18 of the General Division decision.

²³ See paragraph 18 of the General Division decision.

²⁴ See paragraph 18 of the General Division decision.

²⁵ See pages GD3-38 to GD3-40.

²⁶ See section 58(1)(b) of the DESD Act.

²⁷ See section 29(c)(i) of the EI Act.

²⁸ See paragraph 11 of the General Division decision.

[25] The file also shows that the employer told the Commission that the Claimant worked until June 28, 2022 but was expected to work until the last day of operations which would have been July 11, 2022.²⁹

[26] I agree with the parties. The General Division made an error of law when it overlooked the fact that the Claimant left his job shortly before his job was expected to end. Because of that, the General Division should have considered whether a disentitlement to EI benefits was applicable instead of an indefinite disqualification to EI benefits.³⁰

[27] Since there are errors, I can intervene in the General Division's decision.

– **Fixing the errors by returning the matter to the General Division**

[28] To fix the error, I can send the appeal back to the General Division for reconsideration or I can give the decision the General Division should have made.³¹

[29] The parties disagree on how to fix the error.

[30] The Claimant says that he wants me to decide that he had just cause to leave his job because he was uncomfortable with the harassment and threats made by his employer.

[31] The Commission says that I should allow the appeal and send it back to the General Division for a new hearing for the following reasons.³² It argues that the General Division did not identify harassment as an issue and because of that, it did not focus or fully explore the issue at the hearing.³³

²⁹ See page GD3-26 to GD3-27.

³⁰ See sections 30(1) and 33(1) and 33(2) of the EI Act.

³¹ See section 59(1) of the DESD Act.

³² See Commission's representations at pages AD4-1 to AD4-5.

³³ See section 29(c)(i) of the EI Act.

[32] As well, the Commission submits that the General Division did not address the possibility that the Claimant might be disentitled to EI benefits, but only up to the last working day that his contract was supposed to end.³⁴

[33] I find that it would be appropriate to send the matter back to the General Division for reconsideration in this case. In my view, the record is not complete on both issues (harassment and anticipated loss of employment). This means that the Claimant will get a new hearing at the General Division.

Conclusion

[34] The appeal is allowed. The General Division made errors of law. The matter will go back to the General Division for reconsideration.

Solange Losier
Member, Appeal Division

³⁴ See sections 33(1) and 33(2) of the EI Act.