



Citation: *Canada Employment Insurance Commission v TB*, 2023 SST 1815

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Isabelle Thiffault

Respondent: T. B.

Decision under appeal: General Division decision dated June 7, 2023
(GE-22-4278)

Tribunal member: Stephen Bergen

Type of hearing: Teleconference

Hearing date: December 19, 2023

Hearing participants: Appellant's representative

Decision date December 19, 2023

File number AD-23-656

Decision

[1] I am allowing the appeal. The General Division made an error of procedural fairness because it did not acknowledge any of the Appellant's evidence or representations on the issue of "voluntary leaving without just cause."

[2] I am not disturbing the General Division's decision on the issue of the Claimant's availability for work.

Overview

[3] T. B. is the Respondent in this appeal. She made a claim for Employment Insurance (EI) benefits, so I will call her the Claimant. The Claimant was a full-time student with a part-time job. When she started her second year of school, she found she could no longer manage the same number of hours of work. She coordinated with her employer to significantly reduce her hours.

[4] The Appellant, the Canada Employment Insurance Commission (Commission), decided that the Claimant had voluntarily left her employment without just cause, which meant that she was disqualified from receiving EI benefits. It also decided that she was not available for work from September 19, 2022, to June 2, 2023.¹ This meant that she was disentitled to receive EI benefits in that period.² Both decisions were communicated in the same letter dated October 31, 2022.

[5] The Claimant asked the Commission to reconsider, and the Commission responded with two letters, both dated November 24, 2022. In one letter, the Commission said that it was not changing its decision that the Claimant did not have

¹ GD3-23; GD3B-30.

² **Disqualified is not the same as disentitled.** A claimant who is disqualified from receiving benefits may not use any of the hours of insurable employment accumulated prior to the disqualifying event (such as voluntary leaving without just cause) to qualify for a later period of benefits. A claimant who is disentitled because they are not available may not collect benefits so long as they are not available for work, but they may still collect benefits for periods in their benefit period in which they can prove that they are available.

just cause for voluntarily leaving her employment.³ In the other, it said it was not changing its decision that she was not available for work.⁴ The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal).

[6] The General Division found that the Claimant had not voluntarily left her employment, so she was not disqualified from receiving benefits. However, it dismissed the Claimant's appeal on the availability issue. That meant that the Claimant was still disentitled to receiving benefits from September 19, 2022, to June 2, 2023.

[7] The Commission appealed the General Division's decision that the Claimant did not voluntarily leave her employment without just cause.

[8] I am allowing the appeal on this issue. The General Division made an error of procedural fairness because it denied the Commission an opportunity to be heard on the "just cause" issue.

Preliminary matter

[9] The Claimant did not join the scheduled teleconference hearing.

[10] The Tribunal emailed the Claimant a Notice of Hearing on October 10, 2023. The Claimant was the Respondent in this appeal, but she had earlier authorized the Tribunal to communicate with her by email in her appeal to the General Division.

[11] On December 12, 2023, the Tribunal called the Claimant to remind her of the Appeal Division teleconference hearing. She responded that she did not want to participate or hear about it again.

[12] In my opinion, the Claimant had notice of the Appeal Division hearing and made a deliberate choice to not participate. Accordingly, the hearing proceeded in the absence of the Claimant.⁵

³ See GD3B-37.

⁴ See GD3-30.

⁵ See section 58 of the *Social Security Rules of Procedure*.

Issue

[13] The issue in this appeal is:

- a) Did the General Division act in a way that was procedurally unfair by neglecting the Commission's arguments and evidence?

Analysis

[14] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division made an error of law when making its decision.
- d) The General Division based its decision on an important error of fact.⁶

Error of law

[15] The Commission argued that the General Division made an error of natural justice (procedural fairness).

[16] The General Division wrote to the Commission on May 12, 2023. The letter stated that the Claimant was appealing both the entitlement for availability and the disqualification for voluntarily leaving without just cause. It noted that the Commission had not provided submissions or evidence related to the disqualification issue (voluntarily leaving without just cause). The General Division asked the Commission for submissions by May 26, 2023.

⁶ This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

[17] The Commission provided arguments in response on May 16, 2023. At the same time, it provided a second file with material relevant to the disqualification, including the reconsideration decision addressing this issue.⁷

[18] The General Division decided that the Claimant had not voluntarily left her employment, which meant that she was not disqualified from receiving benefits.

[19] However, the General Division decision contains no hint that it ever requested or received any argument or evidence on this issue from the Commission. In fact, the General Division said that the Commission's reconsideration was "silent about voluntary leaving" and that it, "did not address the issue of voluntary leaving in the reconsideration decisions or in its representations to the Tribunal."⁸

[20] I find that the General Division breached its duty of procedural fairness to the Commission. This was likely inadvertent, but the General Division still denied the Commission the opportunity to be heard on the issue of "voluntary leaving without just cause."

Remedy

[21] I have found that the General Division made an error of law, so I must decide what I should do to fix it. I could return the matter to the General Division to reconsider. However, I also have the power to make the decision that the General Division should have made.⁹

[22] The Commission suggests that the appropriate remedy is to return the matter to the General Division. I agree.

[23] The General Division was apparently unaware of the Commission's argument or evidence on the disqualification letter. It did not put this information to the Claimant. It

⁷ See GD4B and GD3B.

⁸ See paras 20 and 21 of the General Division decision.

⁹ See section 59(1) and 64 of the DESDA.

would not be fair for me to make a decision on this issue when the Claimant has not been given a fair opportunity to respond to the Commission.

Conclusion

[24] I am allowing the appeal. The General Division acted in a way that was procedurally unfair by not hearing from the Commission on the disqualification issue.

[25] I am returning the matter to the General Division to reconsider whether the Claimant voluntarily left her employment without just cause. The Commission did not appeal the General Division's decision on the Claimant's availability for work.

Stephen Bergen
Member, Appeal Division