



Citation: *TB v Canada Employment Insurance Commission*, 2024 SST 221

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** T. B.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Gilles-Luc Bélanger

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**Decision under appeal:** General Division decision dated September 7, 2023  
(GE-23-1870)

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**Tribunal member:** Glenn Betteridge

**Type of hearing:** Teleconference

**Hearing date:** February 28, 2024

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** March 5, 2024

**File number:** AD-23-929

## Decision

[1] I am allowing T. B.'s appeal.

[2] She and the Canada Employment Insurance Commission (Commission) agree the General Division made an error. And the Commission now agrees she didn't voluntarily leave (quit) her job.

[3] I accept the parties' agreement and have made the decision the General Division should have made. This means T. B. isn't disqualified from getting Employment Insurance (EI) benefits for voluntarily leaving (quitting) her job.

## Overview

[4] T. B. is the Claimant in this appeal. I call her the Claimant because she made a claim for EI benefits.

[5] She was employed by a temp agency. The company where the temp agency placed her let her go. She didn't keep in contact with the temp agency to find another work placement. Her employer wrote "quit" on her record of employment.

[6] The Commission decided the Claimant voluntarily left (quit) her job without just cause under the *Employment Insurance Act* (EI Act).<sup>1</sup> So it disqualified her from getting benefits.

[7] This Tribunal's General Division agreed with the Commission and dismissed the Claimant's appeal.

[8] Now the Claimant and the Commission (parties) agree the General Division made an error. And the Commission has conceded (agrees) she didn't voluntarily leave (quit) her job. I accept the parties' agreement.

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<sup>1</sup> Section 30 of the *Employment Insurance Act* (EI Act) says a person who voluntarily leaves the job without just cause is disqualified from getting benefits. In other words, they can't get EI regular benefits.

## The parties agree on the outcome of the appeal

[9] The parties reached an agreement at the Appeal Division hearing. This is a summary of what they agreed to

- The General Division made a **serious factual error**.
- I should allow the Claimant's appeal and give the decision the General Division should have given.
- The Claimant didn't voluntarily leave (quit) her job, so she isn't disqualified for this reason.

## I accept the proposed outcome

[10] In voluntary leaving appeals, the General Division has to decide two things

- whether the Commission has shown the person voluntarily left (quit) their job
- if the person quit, whether they have shown they had just cause for quitting in the circumstances

[11] The legal test to decide whether an appellant has voluntarily left (or taken a period of leave) is simple. The question is: Did the employee have a choice to stay or leave?<sup>2</sup> If the employee had a choice, and chose to leave, then their leaving was voluntary.

[12] The General Division correctly set out the legal test for voluntary leaving. But it made a serious factual error when it found the Claimant voluntarily left (quit) her job and based its decision on that finding.

[13] One of the ways the General Division makes a **serious factual error** is to base its decision on a finding of fact it made by ignoring evidence. This includes the situation

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<sup>2</sup> See *Canada (Attorney General) v Peace*, 2004 FCA 56, at paragraph 15.

where a decision maker fails to reasonably account for critical evidence that ran counter to its findings.<sup>3</sup>

[14] I have reviewed the documents from the General Division record and listened to the hearing recording. Based on my review of that evidence, I agree with the parties. The General Division didn't reasonably account for the Claimant's evidence that showed she didn't choose to leave her job, in the circumstances.<sup>4</sup>

[15] Because I have found the General Division made an error, I have the power to fix the error.<sup>5</sup> The parties agreed I should give the decision the General Division should have given.

[16] At the Appeal Division, the Commission conceded (agreed) the Claimant didn't quit her job.

[17] I am satisfied the evidence from the General Division record supports the parties' agreement the Claimant didn't voluntarily leave (quit) her job. This means the Commission can't disqualify her from getting benefits based on the voluntary leaving section of the EI Act.

## **Conclusion**

[18] I agree with parties' that the General Division made an error. And I accept their agreement that the Claimant didn't voluntarily leave (quit) her job. This means she isn't disqualified from getting EI benefits for this reason.

[19] So I am allowing the Claimant's appeal.

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<sup>3</sup> See paragraph 41 of *Canada (Attorney General) v Walls*, 2022 FCA 47, where the court cites three Federal Court of Appeal cases that say this.

<sup>4</sup> The Commission lays out its argument at page AD03-4 of its written arguments. And see the Claimant's argument at page AD01-4 of her application to the appeal division.

<sup>5</sup> Section 59(1) of the DESD Act gives this power to the Tribunal's Appeal Division.

[20] At the hearing, the Commission's representative said he didn't know whether there were any other legal reasons the Commission can't pay the Claimant EI benefits.

Glenn Betteridge  
Member, Appeal Division