



Citation: *BP v Canada Employment Insurance Commission*, 2024 SST 250

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: B. P.
Representative: N. P.

Respondent: Canada Employment Insurance Commission
Representative: Adam Forsyth

Decision under appeal: General Division decision dated October 10, 2023
(GE-23-2035)

Tribunal member: Jude Samson

Decision date: March 8, 2024
File number: AD-23-996

Decision

[1] B. P. is the Claimant in this case. With the agreement of the parties, I'm setting aside his withdrawal, allowing his appeal, and giving the decision the General Division should have given. The Claimant did not commit misconduct and is not disqualified from receiving Employment Insurance (EI) benefits.

Background

[2] The Claimant was fired from his job because he didn't give enough notice that he would miss work for medical reasons. The Canada Employment Insurance Commission concluded that the Claimant was dismissed for misconduct and disqualified him from receiving EI benefits.¹

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division and it dismissed his appeal. The Claimant then appealed the General Division decision to the Tribunal's Appeal Division and was given permission to appeal.

[4] In its submissions to the Appeal Division, the Commission agreed that the appeal should be allowed. And at an earlier case conference, the Commission seemed to accept that it would cancel the disqualification and that the Claimant could withdraw his appeal.

[5] The Claimant quickly withdrew his appeal, but the Commission encountered problems cancelling the disqualification. As a result, I held a second case conference, where the parties agreed on the way forward.

¹ Section 30 of the *Employment Insurance Act* disqualifies people from receiving EI benefits when they're dismissed for misconduct.

The parties agree on the outcome of the appeal

[6] I would summarize the agreement of the Claimant and Commission as follows:

- Exceptional circumstances exist that justify setting aside the Claimant's withdrawal.
- The General Division committed an error of law by failing to analyze all the evidence properly.
- Given the General Division's error, I should give the decision the General Division should have given.
- The Claimant wasn't dismissed for misconduct, as defined under the *Employment Insurance Act* (EI Act).

I accept the parties' agreement

[7] The Claimant withdrew his appeal based on an understanding that the Commission would cancel his disqualification.² However, the Commission encountered procedural obstacles and was unable to do so.³ I'm setting aside the Claimant's withdrawal because of these special circumstances.⁴

[8] I also agree that the General Division made an error of law by failing to analyze all the evidence properly.⁵

[9] The General Division noted that in January and February 2023, the Claimant's employer provided him with warnings about failing to provide enough notice that he would miss work, even for medical reasons. So, when another incident occurred in April 2023, the General Division concluded that the Claimant knew or should have known that he would be dismissed.

² See document AD5.

³ See document AD6.

⁴ *CE v Canada Employment Insurance Commission and X*, 2021 SST 25 describes the Tribunal's power to set aside a withdrawal, and the limited circumstances in which it should be done.

⁵ See *Oberde Bellefleur v Canada (Attorney General)*, 2008 FCA 13.

[10] However, there was evidence of intervening events that the General Division didn't analyze. For example, the employer imposed no disciplinary measures when the Claimant missed a day of work in March without giving notice. Plus, the Claimant discussed his medical condition with his supervisor, including how his symptoms are sometimes unpredictable, and his supervisor had offered to work with him and to accommodate his needs.

[11] The parties agree that this evidence is relevant and that it affects the outcome of the appeal. They also agree that the General Division should have analyzed this evidence because it contradicts the General Division's conclusion that the Claimant knew or should have known that he would be dismissed because of the April incident.

Conclusion

[12] I agree with the agreement reached between the parties. I'm setting aside the Claimant's withdrawal and allowing his appeal. The General Division made an error of law by failing to analyze all the evidence properly.

[13] In the circumstances, I'm giving the decision the General Division should have given. The Claimant didn't lose his job because of misconduct, as defined under the EI Act. This means that there's no reason to disqualify him from receiving EI benefits.

Jude Samson
Member, Appeal Division