Citation: *GH v Canada Employment Insurance Commission*, 2024 SST 249

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	G. H.
Respondent:	Canada Employment Insurance Commission
Representative:	Jessica Earles

Decision under appeal:	General Division decision dated July 26, 2023 (GE-23-1615)

Tribunal member:	Elizabeth Usprich
Type of hearing:	Teleconference
Hearing date:	January 23, 2024
Hearing participants:	Appellant Respondent's representative
Decision date:	March 12, 2024
File number:	AD-23-781

Decision

[1] The appeal is dismissed.

[2] The General Division didn't make a reviewable error.

Overview

[3] The Claimant, G. H., worked in a small shop. He quit due to the working environment.

[4] The General Division found the circumstances that existed when the Claimant quit were he was being harassed and there was an unsafe working environment.

[5] The General Division decided the Claimant had reasonable alternatives to quitting because he could have spoken to the owner or reported the shop to the Alberta Occupational Health and Safety (AOHS).

[6] I have considered all of the Claimant's arguments. I don't find the General Division made any errors that would allow me to intervene (step in). The Claimant had at least one reasonable alternative to quitting. That means I must dismiss the appeal.

Issues

[7] Did the General Division make an error when it decided the Claimant had no reasonable alternatives to quitting when he did?

Analysis

[8] I can only intervene if the General Division made an error or mistake. There are only certain errors I can consider.[1] Briefly, the errors I can consider are whether the General Division:

[1] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the grounds of appeal.

- acted unfairly in some way;
- decided an issue it shouldn't have or didn't make a decision on something it should have;
- didn't follow the law or misinterpreted the law; or
- based its decision on an important error about the facts of the case.

[9] On his leave to appeal application the Claimant checked the box that says, "the General Division didn't follow procedural fairness". The Claimant agreed at the hearing that his hearing and the process was fair. He has an issue with the General Division's decision and thinks there is a mistake in the decision.

[10] The Appeal Division process isn't a redo of the General Division hearing. Unless there is an error, I can't just reweigh the evidence that was before the General Division.[2] So, even if I would have decided the case differently, I can't make changes to the decision unless there is an error of fact identified.[3]

[11] The General Division is given some freedom when it makes findings of fact. When I look at whether I can intervene, there has to be an important error that the General Division **based** its decision on. So, if the finding is "willfully going contrary to the evidence," or if crucial evidence was ignored, then I could intervene.[4]

[12] The General Division doesn't have to mention every piece of evidence.[5] The law is clear that I can intervene only if the General Division "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."[6]

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[2] See *Uvaliyev v Canada (Attorney General)*, 2021 FCA 222 at paragraph 7; and *Sibbald v Canada (Attorney General)* 2022 FCA 157 at paragraph 27.
[3] The finding of fact must be made in a perverse or capricious manner or without regard to the material. See *Canada (Attorney General) v Bernier*, 2017 FC 120 at paragraph 34.
[4] See *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.
[5] See *Rahal v Canada (Minister of Citizenship & Immigration)*, 2012 FC 319 at paragraph 39.
[6] See section 58(1)(c) of the DESD Act.

The General Division didn't make an error when it found the Claimant had at least one reasonable alternative to quitting

[13] This case is about voluntary leaving. It isn't disputed the Claimant quit his job on January 10, 2023.[7]

[14] The *Employment Insurance Act* (EI Act) says a claimant has "just cause" for leaving their work, if they had no reasonable alternative to leaving, having regard to "all the circumstances".[8]

[15] The General Division found the Claimant's circumstances included that he was being harassed at work and was in an unsafe workplace. Both parties don't dispute this.

[16] The General Division found the Claimant had two reasonable alternatives to quitting when he did. This is what the appeal hearing was about.

– The General Division applied the correct legal test

[17] It hasn't been challenged that the General Division identified and applied the correct legal test.[9]

[18] The Claimant says he thinks the General Division reached the wrong conclusion when it decided he had reasonable alternatives to quitting.

[19] The Appeal Division can't consider whether there is an error with how the General Division applied the law to the specific facts of this case.[10] That is considered to be an error of mixed fact and law.

[20] I understand the Claimant doesn't agree with the General Division's decision. Specifically, he says he didn't have a reasonable alternative to speak to the owner of the company about the harassment issue. The General Division considered this.[11]

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[7] See GD3-23 record of employment.
[8] See section 29(c) of the *Employment Insurance Act* (EI Act).
[9] See the General Division decision at paragraphs 12 to 15.
[10] See *Garvey v Attorney General of Canada*, 2018 FCA 118; *Cameron v Canada (Attorney General)*, 2018 FCA 100; and *Quadir* v *Attorney General of Canada*, 2018 FCA 21.
[11] See the General Division decision at paragraphs 29 and 30.

[21] The Claimant also doesn't think it was a reasonable alternative to quitting to complain to the Alberta Occupational Health and Safety (AOHS). The Claimant spoke to them after he quit. He says if he had spoken to them before he quit, he felt the owner would have fired him.[12] Again, the General Division considered this and found that going to AOHS was a reasonable alternative.[13]

[22] The General Division was applying the correct law. Considering whether the Claimant had a reasonable alternative to quit is part of the just cause test. So, that means the error the Claimant is complaining about is one of mixed fact and law and I can't consider this.

[23] The Claimant is not represented. So, I am also going to consider his arguments from an alternative viewpoint to make sure that I didn't misinterpret or fail to consider something.[14] I consider below whether the General Division made an important error of fact.

– **In a small shop setting it could be unrealistic to expect a claimant to go to a superior but once the Claimant decided to quit there was no reason not to**

[24] The Claimant argues the General Division made a mistake in its decision because it didn't consider that he couldn't complain without getting fired. The Claimant explained he worked in a small shop. He says the owner wasn't approachable. The owner's wife, who does office work, was labelled as being Human Resources.[15] The Claimant says that means there really wasn't a human resources department. The only other person he regularly worked with was the co-worker who was found to be harassing the Claimant.

[12] Listen to the General Division hearing recording at 00:21:56.
[13] See the General Division decision at paragraph 32.
[14] See *Karadeolian* v *Canada (Attorney General)*, 2016 FC 165 at paragraph 10.
[15] The Claimant said he wasn't aware that the owner's wife was considered Human Resources until he got the materials from the Commission. See GD3-26 and GD3-34.

[25] The Commission argues the General Division didn't make a mistake. Alternatively, it is the Commission's position that the General Division considered everything fully.[16]

[26] The General Division said the Claimant had a reasonable alternative and should have spoken to the owner of the company prior to quitting.[17] The evidence before the General Division was if the Claimant reported the issues to the owner, he was certain he would have immediately lost his job.[18]

[27] The General Division may not have considered that this was a small shop. That makes a difference as to whether or not it was reasonable for the Claimant to go to the owner.

[28] The Claimant says the harassment had been ongoing for many months. I accept the Claimant's argument that he felt uncomfortable going to the owner about the issues. He says he was worried about getting fired. Originally, he didn't want to lose his job.

[29] The General Division said if the Claimant were right and he would have been fired for complaining, he would have been no worse off than when he decided to quit.[19]

[30] I agree the Claimant's argument that he would have been fired if he raised the issue with the owner doesn't make sense once he decided to quit. Once the Claimant decided he was going to quit, it seems the Claimant would have had nothing to lose by raising the issue. At that point, he was ready to quit. So, if he were fired there would not have been a difference.

[31] The Claimant argues the owner was away on vacation when he quit. Yet, he could have spoken to the owner once he returned.

[32] So, I agree the General Division didn't consider the effect of the "small shop" on the Claimant. But this would have only been part of the consideration. Once the

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[16] The Commission relied on the General Division's decision paragraphs 29, 30, 32 and 33.
[17] See the General Division decision paragraph 29.
[18] Listen to the General Division hearing at 34:19 and see GD3-35.
[19] See the General Division decision at paragraph 30.

Claimant decided to quit, the General Division found there was nothing to lose by talking to the owner. The General Division's finding wasn't made in a perverse and capricious manner. This means I can't intervene on this issue.

[33] Even if this wasn't a reasonable alternative, there was still another reasonable alternative that the General Division found.

– **The Claimant could have filed a complaint with the Alberta Occupational Health and Safety (AOHS)**

[34] The legal test under the EI Act requires that the Claimant have "no reasonable alternative". So, if there is one reasonable alternative that means the Claimant didn't have just cause for leaving.

[35] The General Division also found it was a reasonable alternative for the Claimant to report his employer to AOHS before he quit.[20] The AOHS operates under Alberta's *Occupational Health and Safety Act* (OHSA). Under the OHSA, harassment is considered a workplace hazard. The unsafe work conditions would also fall under the OHSA.

[36] The Claimant filed a complaint with the AOHS after he quit. He didn't give a reason why he didn't do so beforehand. He argued that he would have been "fired for sure" if he filed a complaint.

[37] The General Division found that if the Claimant had reported the issues to AOHS prior to quitting that it might have resolved the issue.

[38] Usually, a claimant must attempt to resolve workplace conflicts before simply quitting.[21] The Claimant argues he would have been fired for sure if he raised any issue. The Claimant says the issues had been ongoing at his workplace over many months. It is understandable why he would not have raised the issues right away. His fear that he

[20] See the General Division decision at paragraph at 31.
[21] See *Canada (Attorney General)* v White, 2011 FCA 190 at paragraph 5.

would have been fired early on in his employment makes sense. He didn't want to lose his job.

[39] Yet, once he decided he was ready to quit it seems the Claimant would not have anything to lose by going to the AOHS. While it might have meant that he would have been let go as a result, if he were ready to quit then it should not have made a difference.

[40] The Claimant argues he wasn't thinking straight and didn't know what rights he had before he quit. But, ignorance of the law isn't any excuse. The Claimant said the harassment happened over many months. That means the Claimant had many months to look into things.

[41] The Claimant was granted permission to appeal to have a merits hearing. At the permission to appeal stage, the only consideration is whether there is an arguable case. That is a low threshold. That means someone only has to have a potential argument that there was an error in the General Division decision.

[42] Yet, it is different at the merits hearing for the appeal. At this stage, it must be shown that there actually **is** an error. This is a higher threshold than just being able to show you might have an argument. In this case, the Claimant hasn't shown that there is an error in the General Division decision.

[43] So, even if the Claimant disagrees with how the General Division characterized the evidence, the General Division didn't ignore or misinterpret the evidence. The General Division's findings weren't made in a perverse and capricious manner. The General Division applied the correct legal test. There weren't any important errors of fact. This means there isn't an error that allows me to intervene.[22]

[22] See *Page v Canada (Attorney General)*, 2023 FCA 169 at paragraph 77.

Conclusion

[44] The General Division didn't make a reviewable error.

[45] The appeal is dismissed.

Elizabeth Usprich
Member, Appeal Division