



Citation: *NG v Canada Employment Insurance Commission*, 2024 SST 218

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: N. G.

Respondent: Canada Employment Insurance Commission
Representative: Kevin Goodwin

Decision under appeal: General Division decision dated September 16, 2023
(GE-23-1701)

Tribunal member: Elizabeth Usprich

Type of hearing: Teleconference
Hearing date: February 27, 2024
Hearing participants: Appellant
Respondent's representative

Decision date: March 5, 2024
File number: AD-23-937

Decision

[1] The appeal is allowed.

[2] The General Division made an error of law. There was also a natural justice error. The matter has to go back to the General Division for reconsideration.

Overview

[3] N. G. is the Claimant. He worked in the trucking industry.

[4] The Claimant says there was a shortage of work and then his employer let him go. His employer said he quit. The General Division decided the Claimant quit.

[5] The Claimant says his hearing wasn't fair because the General Division didn't hear from his witness. The Claimant also says the General Division disregarded evidence it had before it.

[6] I agree the General Division made errors. I have decided this case must be returned to the General Division for a new hearing.

Issues

[7] The issues in this appeal are:

- a) Did the General Division make an error of law by failing to consider the circumstance of harassment under section 29(c)(1) of the *Employment Insurance Act* (EI Act) for voluntary leaving?
- b) Did the General Division fail to provide a fair hearing by not adjourning or reconvening the hearing so the Claimant's witness could testify?
- c) If so, how should the error be fixed?

Analysis

[8] I can intervene (step in) only if the General Division made an error. I can only consider certain errors.¹ Briefly, the errors I can consider are about whether the General Division:

- acted unfairly in some way
- dealt with an issue it didn't have the power to deal with, or didn't deal with an issue it was supposed to deal with
- made an error of law, such as not applying the full legal test
- based its decision on an important error about the facts of the case

[9] In this case, the Claimant argues the General Division didn't act fairly and didn't take all of his evidence into consideration.

The General Division made an error of law by failing to consider all of the circumstances for voluntary leaving

[10] The Claimant says there was either a shortage of work or he was let go from his employment. The employer and the Commission said the Claimant quit.

[11] The General Division decided that the Claimant quit. This means it found the Claimant voluntarily left his employment.

[12] The 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".²

[13] One of the circumstances listed is "sexual or other harassment".³ The Claimant raised this issue multiple times over the course of his hearing at the General Division.⁴

¹ See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

² See section 29(c) of the *Employment Insurance Act* (EI Act).

³ See section 29(c)(i) of the Act.

⁴ Listen to the General Division hearing recording at 00:17:58; 00:18:06; 00:22:44; 00:24:00; 00:24:39; 00:28:52; and 00:29:54.

Yet, the General Division focussed on the issues of the Claimant's truck and his pay and didn't mention the circumstance of harassment in its decision.

[14] For example, the Claimant made the following comments about the harassment:

It was the same stuff I was dealing with when I was being harassed and then it was indirectly happening behind my back but still about me and just basically them calling me cry-baby and some vulgar words and stuff like that⁵

Last time that I went in for a meeting I got cornered by "R", "A" and "D". D was our general manager, R is the owner/manager, he's the owner's son – whatever you want to call him, and A was the safety guy. Well, all three of those guys cornered me in the office and basically bullied me. It was like crazy. That day, I left that shop, and like I am not, I am a pretty big dude I can take a lot I've got pretty big shoulders but I left that shop almost in tears because I was like what the hell? What just happened? And one of the other guys told me, "don't let them do that next time take another driver with you." And he said, "next time you gotta go in there take me with you and I'll sit there and I'll make sure they're not doing that to you." Cause he said, "that's what they will do. They'll corner you, they'll bully you because they want you to believe that they're right in what they did or whatever." I got called an idiot over and over and over again just because. This was when I was brought in about the harassment and the money pay. I got called an idiot, I don't know how many times by the same guy I was complaining about the harassment from and that was D, and he was calling me an idiot in front of the other two.⁶

He (R) said, "it seems like you've got too many issues with us here" meaning that I had too many issues with my pay, issues with the truck, issues with the management.⁷

[15] Once the General Division decided the Claimant voluntarily left his employment, it then had to look at all of the circumstances that existed at the time the Claimant left. The General Division only considered some of the Claimant's circumstances. The Claimant repeatedly said he was harassed at work. He said this was one of the reasons why he didn't want to go into the office. That means the circumstance had to be

⁵ Listen to the General Division hearing recording at 00:17:58.

⁶ Listen to the General Division hearing recording at 00:22:44.

⁷ Listen to the General Division hearing recording at 00:29:54. The Claimant explained that the issues with the management was the harassment he was receiving.

considered. There was evidence given about this circumstance, so, it is an error of law that the General Division didn't consider it.

The Claimant didn't have a fair hearing because his witness didn't get to testify

[16] The Claimant mentioned during the hearing that he had a witness who wasn't able to attend because he was working.⁸

[17] The General Division offered to give the witness time to send in written "stuff" about what they would have said if they attended the hearing.⁹ The Claimant said he could speak to his witness to see if that was possible.

[18] The Claimant apparently called into the Tribunal after the hearing and the General Division wrote to the Claimant about the witness.¹⁰ The General Division specifically notes that an accommodation was offered to let the witness submit information in writing. The General Division notes that the Claimant's witness didn't want to submit information in writing and preferred to have a conversation with the General Division hearing member. The General Division denied the Claimant's request.

[19] The General Division should have considered whether it would have made sense to adjourn or reconvene the Claimant's hearing. The Claimant went into detail about what the witness would have testified about. The Claimant argues his hearing was unfair because his witness had first-hand evidence to give for many of the issues.

[20] The General Division should have considered adjourning or reconvening the hearing to allow for sworn testimony. It is clear this was the Claimant's preference. It would have also allowed the General Division to ask the Claimant's witness questions. This option wasn't explored by the General Division at the hearing. This was a failure of

⁸ Listen to the General Division hearing recording at 00:57:42. The Claimant also mentions his witness throughout the hearing but this is where he said he wanted him to testify.

⁹ Listen to the General Division hearing recording at 00:57:45.

¹⁰ See GD6.

natural justice. The Claimant should have been made aware of what his options were since he made it clear that he wanted his witness to testify.

Remedy

[21] Since I have found errors, there are two main ways I can remedy (fix) it. I can make the decision the General Division should have made. I can also send the case back to the General Division if the General Division hearing wasn't fair.¹¹

[22] The Claimant said because his witness didn't testify, that all the evidence wasn't presented at the General Division. The Claimant says the matter should go back to the General Division for reconsideration.

[23] The Commission said they didn't think there were any errors, but if I found there was, I should just substitute my decision.

[24] I accept the Claimant's argument that his witness has first-hand information about the harassment, and other issues, the Claimant says he faced.

[25] I find the only way to fix the error is to send the case back to the General Division.

Conclusion

[26] The appeal is allowed. The General Division made an error of law and failed to provide a fair process. This means the case needs to go back to the General Division for a new hearing.

Elizabeth Usprich
Member, Appeal Division

¹¹ Section 59(1) of the DESD Act allows me to fix the General Division's errors in this way.