Citation: *CW v Canada Employment Insurance Commission*, 2024 SST 531

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	C. W.
Respondent:	Canada Employment Insurance Commission
Representative:	Julie Duggan

Decision under appeal:	General Division decision dated October 31, 2023 (GE-23-1353)

Tribunal member:	Glenn Betteridge
Type of hearing:	Teleconference
Hearing date:	April 23, 2024
Hearing participants:	Appellant Respondent's representative
Decision date:	May 14, 2024
File number:	AD-23-1008

Decision

[1] I am dismissing C. W.'s appeal.

[2] The General Division made an important factual error. To remedy (fix) that error, I have made the decision the General Division should have made.

[3] My decision doesn't change the outcome. I have decided C. W. hasn't shown he had just cause for voluntarily leaving his job. This means he is disqualified from getting Employment Insurance (EI) benefits.

Overview

[4] C. W. is the Claimant in this appeal. He made a claim for EI regular benefits after his job at a retail store ended.

[5] The Canada Employment Insurance Commission (Commission) decided he was disqualified from getting EI benefits because he voluntarily left his job without just cause. In other words, leaving his job wasn't his only reasonable alternative in the circumstances.

[6] The Claimant appealed to the General Division, which dismissed his appeal. It decided he resigned from his job on November 10, 2021. If found that he didn't have a job offer when he resigned. It also decided he hadn't proven he had just cause because he had a reasonable alternative to quitting when he did. He could have dealt with his working conditions and differences with his manager.

[7] The Claimant says the General Division made an important error of fact. He had a job offer at the time he quit, which he said at the General Division hearing. The Commission says the General Division didn't make any errors.

Issue

[8] There are three issues in this appeal:

- Did the General Division make an important factual error when it found the Claimant didn't have a job offer when he quit?
- If the General Division made an error, how should I remedy (fix) the error?
- If I am going to make the decision the General Division should have made, did the Claimant have just cause for quitting his job when he did?

Analysis

[9] I am dismissing the Claimant's appeal. Although he proved the General Division made an error, this doesn't change the outcome in his appeal. I have decided he hasn't shown just cause, in all the circumstances, for quitting when he did. This means he can't get EI benefits.

The Appeal Division's role

[10] The Appeal Division's role is different than the General Division's role. The law allows me to step in and fix a General Division decision where a claimant shows the General Division:

- used an unfair process or was biased
- decided an issue it should not have decided, or didn't decide an issue it had to decide (in legal terms, acted beyond or refused to exercise its jurisdiction)
- based its decision on a legal error
- based its decision on an important factual error[1]

[1] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) calls sets out these grounds of appeal. I will call these errors.

[11] If the Claimant doesn't show the General Division made one of these errors, I have to dismiss his appeal.

[12] Sections 29 and 30 of the *Employment Insurance Act* (EI Act) say that a person who voluntarily leaves their job without just cause is disqualified from getting EI benefits.

The General Division made an important factual error—the Claimant had a job offer when he resigned

[13] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring, misunderstanding, or mistaking the evidence.[2] In other words, the Claimant has to show the evidence goes squarely against or doesn't support a factual finding the General Division made.[3]

[14] I can presume the General Division reviewed all the evidence—in its decision it doesn't have to refer to every piece of evidence.[4] I can't reweigh the evidence.[5] And I can't find an error only because I would have weighed the evidence differently or come to a different decision based on the evidence.

[15] The Claimant argued the General Division made an error when it found he didn't have a job offer when he resigned. He says he testified about the job offer at the General Division hearing. He says the General Division should have done its "due diligence" and asked him to give more information about his job offer.

[16] The Commission argued the Claimant's testimony that he already had a contract to start a new job isn't supported by the evidence.[6] It says the Claimant didn't give a

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[2] Section 58(1)(c) of the DESD Act says it's a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this ground of appeal using plain language, based on the words in the Act and the cases that have interpreted the Act.
[3] See *Garvey* v *Canada (Attorney General),* 2018 FCA 118; and *Walls v Canada (Attorney General)*, 2022 FCA 47.
[4] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.
[5] See for example *Paraparan v Canada (Attorney General)*, 2020 FC 363 at paragraph 21.
[6] See AD3-6.

specific start date when the General Division member asked him. And the Claimant told the Commission that he was in the process of accepting another job.[7]

[17] The General Division considered the Claimant's working conditions at the time he quit. At paragraph 23 it wrote about the Claimant's efforts to find work around the time that he started working at the retail job in or around September 2021 (paragraph 22).

> [23] Around the same time, the Appellant had applied to other jobs and hoped to get a job offer in December 2021 or January 2022. The Appellant confirms that he did end up getting a job sometime in January 2022.

[18] After considering the circumstances that existed when the Claimant resigned, the General Division considered whether the Claimant had a reasonable alternative to quitting. At paragraph 29 it found that the Claimant had always planned to quit. Then it went on to make the following finding of fact:

> [35] When the Appellant quit, he didn't have a job offer from anywhere else. I accept that he had applied to other jobs at the time, but when he quit, he hadn't done so because he was about to start somewhere else. His reasons for quitting were solely because of his COVID-19 concerns and issues with his manager.

[19] At the General Division hearing, the Claimant testified:

- he had a job lined up at the time he quit[8]
- if he was able to work an extra two weeks, he would end up leaving the retail store in early November, which would give him or four weeks to recuperate until the next job, he already signed a contract[9]

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[7] The Commission cites its record of a telephone call with the Claimant, which took place on December 8, 2021. Here is the relevant section of the Commission's notes: "Called client regarding reason for separation from X. Client indicates that he is in the process of accepting employment with another company which will give him better pay. Client's last day worked with X was 11-10-2021 and client expects to begin his new job either late December 2021 or early January 2022."
[8] Listen to the hearing recording at 19:57.
[9] Listen to the hearing recording at 22:00.

- leaving the retail store job was his plan already—his retail store job was a steppingstone to the next job, where he had been working for two years (at the time of the hearing)[10]

- around the same time he started the retail store job he knew that he would be starting another job (with X) in December or January[11]

- after he quit, he offered to stay for two weeks because it would align with his next job perfectly[12]

[20] Nothing in the General Division's decision shows it grappled with or weighed the Claimant's testimony that goes against the factual finding it made. While the General Division doesn't have to refer to every piece of evidence, in this case it referred to none. So it's finding that the Claimant didn't have a job offer when he quit isn't supported by the evidence. And I can't weigh the evidence to decide if it supports the General Division's finding of fact.

[21] Given the Claimant's testimony, the General Division made a mistake about the evidence or ignored the Claimant's evidence. Because the General Division found he didn't have a job offer, it didn't consider that circumstance when it decided he didn't have just cause for leaving. So the General Division based its decision on an incorrect finding of fact it made by mistaking or ignoring the evidence. In other words, the General Division made an important factual error.

[22] The Commission says the General Division didn't make an error because there is some evidence that supports the General Division's factual finding. I don't accept the Commission's argument. The legal test isn't "some evidence that supports" a factual finding. The General Division makes an error where it fails to reasonably account at all

[10] Listen to the hearing recording at 26:14 to 27:15.
[11] Listen to the hearing recording at 30:57.
[12] Listen to the hearing recording at 47:19.

for critical evidence that ran counter to its findings.[13] In this case, the General Division failed to reasonably account for the Claimant's evidence that he had a job offer.

The General Division made a mistake about the date the Claimant resigned

[23] The General Division found that the Claimant resigned from his job on November 10, 2021—in other words, the 10th day of the 11th month of 2021 (paragraph 13).

[24] The Claimant and the Commission agreed the General Division got this wrong.[14]

[25] The records of employment (ROEs) show the Claimant's last day of work was 11/10/2021.[15] The ROE form uses the D/M/Y format for all dates. The Commission used October 11, 2021 in its decision letter.[16] So these documents all say the Claimant's last day of work was October 10, 2021.

[26] The General Division made a mistake when it switched the month and day. The General Division didn't base its decision on this mistake, so it doesn't count as an important factual error. But the date of the Claimant's last day of work is important because of the remedy I have chosen, and the law I have to apply.

Remedy: fixing the error by making the decision the General Division should have made

[27] The law gives me the power to fix (remedy) the General Division's error. In appeals like this one, I can:

- send the case back to the General Division to reconsider, or

[13] See *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.
[14] The Claimant agreed at the Appeal Division hearing. The Commission agreed at the hearing, and in its written argument at AD3-4, footnote 16.
[15] See GD3-14 to GD3-20.
[16] See GD3-26.

- make the decision the General Division should have made (based on the evidence before the General Division without considering any new evidence)

[28] The Claimant wanted me to send the case back to the General Division because he says he has more evidence to "get this fixed."

[29] The Commission argued I should make the decision the General Division should have made. It said the hearing was fair and the evidence was complete.

[30] I agree with the Commission. The Claimant had a full and fair opportunity to know the Commission's case, and to present evidence and arguments to show he had just cause for voluntary leaving.

[31] The Tribunal sent the Claimant the Commission's documents well before the hearing. At the hearing the General Division explained the law, asked the Claimant questions, and gave the Claimant an opportunity to explain the circumstances he relied on to show he had just cause. The Claimant raised three circumstances: health and safety (COVID-19 risks to him and his family), his relationship with his manager (focusing on the disagreement around taking vacation), and whether he already had another job lined up. The General Division gave him an opportunity to explain each, including asking him questions to clarify his evidence.

[32] The law puts the burden of proof on the Claimant to show he had just cause. The General Division can't do its own investigation, or its own "due diligence" or "fact checking" as the Claimant argued it should have done. And it doesn't have to ask the Claimant to give it documentary evidence. So I can't accept the Claimant's argument the General Division made an error by not giving him a fair hearing when it didn't do these things.

[33] At the Appeal Division hearing the Claimant also said the General Division member was biased, prejudged his case, and ignored what the Claimant tried to say. He also argued the General Division definitely made an error of jurisdiction because it made its decision based on a casual conversation, which is how the Claimant described the hearing.

[34] I listened to the General Division hearing, reviewed the evidence before the General Division, and read the General Division decision. I can't accept the Claimant's arguments about bias, prejudice, and jurisdiction for three reasons. First, the Claimant is trying to recast the important factual error I accepted above as another type of error. Second, the Claimant hasn't proven the General Division made any of these other errors. Third, the Claimant is really objecting to the outcome in his appeal. He wants another chance to prove his case at the General Division, based on additional evidence he says he has. But the General Division already gave the Claimant a full and fair opportunity to make his case.

[35] So I am going to make the decision the General Division should have made, based on the evidence that was before the General Division.

– The issues I have to decide

[36] I have to decide three issues:

- What date did the Claimant resign?
- At the time he resigned, did he have a reasonable assurance of another employment in the immediate future under section 29(c)(vi) of the EI Act?
- In all the circumstances that existed when he resigned, did he have just cause for resigning? In other words, was quitting his only reasonable alternative?

– The legal test in voluntary leaving appeals

[37] The General Division correctly set out the test it had to apply in the Claimant's voluntary leaving appeal (paragraphs 15 to 17). I will use that test.

[38] First I have to decide if the Claimant quit, and if so, when he quit. These are questions of fact.

[39] I adopt the General Division's finding that the Claimant quit his job. Neither party challenged that finding. And the evidence supports that finding.

[40] As I set out above, the General Division made a mistake about the Claimant's last day of work. The weight of the evidence shows the Claimant's last day of work was October 11, 2021.

[41] Next I have to consider whether the Claimant has proven it's more likely than not he had just cause for quitting his retail job effective October 11, 2021—in all circumstances that exited at that time.

– **The circumstances that existed at the time the Claimant quit**

[42] I have to consider whether the Claimant had a reasonable assurance of another employment in the immediate future. This circumstance is listed under section 29(c)(vi) of the EI Act. There are three essential requirements a person has to meet at the time they quit. They must know **all three** of these things:

- whether they will have employment
- what employment they will have with what employer
- at what moment in the future they will have that employment[17]

[43] Based on the evidence that was before the General Division, I find the Claimant hasn't shown he knew when his new job would start. He didn't have a clear start date. His testimony shows that all he knew when he quit in early October 2021 was that his new job would start in December 2021 or January 2022. This is too vague. It's not a date or a moment in the future.

[44] This means the Claimant hasn't shown he meets the third part of the legal test. So this circumstance (a reasonable assurance of another employment in the immediate future) didn't exist at the time he quit his job.

[45] However, I accept the evidence shows the Claimant was working towards finalizing the job offer, including a start date, with X at the time he quit. I will take this

[17] See *Canada (Attorney General) v Bordage*, 2005 FCA 155. At paragraph 11, the Federal Court of Appeal sets out these three factors, with citations to five Federal Court of Appeal cases.

into account when I consider whether, in all the circumstances that existed when he quit, he had just cause. I will do this because the law says I have to look at all his circumstances together (in other words, cumulatively) when I decide whether he had a reasonable alternative to quitting when he did.

[46] Based on the evidence, the General Division accepted two other circumstances.

[47] First, at paragraphs 21 to 25, the General Division considered the Claimant's working conditions. It focused on the risk he says he faced due to COVID-19 and the pressure from his family because of that risk. It found the Claimant knew about these working conditions before accepting the job and started to work there anyway (paragraph 32).

[48] Second, at paragraphs 26 to 28, the General Division considered the differences with his manager. The General Division decided it was clear the Claimant simply didn't like his work environment in relation to COVID-19 or his manager's management style (paragraph 34).

[49] I am adopting the General Division's findings about these two circumstances.

[50] At the Appeal Division, the Claimant agreed that COVID-19 was a factor in his decision to quit, one of his just cause reasons. But he argued the General Division made a mistake when it assumed the Claimant wasn't getting along with his manager. He said the member should have checked with him before assuming this.

[51] I can't accept the Claimant's argument about his differences with his manager. I listened to the hearing. The General Division's findings are supported by the Claimant's testimony. It didn't ignore or mistake his testimony. It weighed the evidence and summarized and characterized the evidence about his differences with his manager. The Claimant objects to the weight, emphasis, and characterization. But he hasn't shown the General Division made an important factual error about this. So I can adopt this circumstance.

– **The Claimant had a reasonable alternative to quitting**

[52] I accept the Claimant's testimony at the General Division that he was using the retail job as a steppingstone to a job that was a better fit with his skills and experience.[18] I accepted above that he was working on finalizing a job offer and start date (in December or January) with X. He also testified, and I accept, he had planned to leave his retail job with time to recuperate before he started the new job.[19] I have no reason to doubt this is what he was thinking and planning. There is no evidence that goes against that. So I have considered these facts and circumstances.

[53] I have also considered the Claimant's differences with his manager, and the pressure he felt from his family because of the risk of COVID-19 from his retail job.

[54] Considering the circumstances that existed when he quit, I find he had two reasonable alternatives. Rather than quitting, he could have:

- worked on the days his manager scheduled him, rather than take vacation, which would have preserved the employment relationship
- tried to resolve his differences with his manager, so he could continue to work until his start date with X was in the immediate future[20]

[55] My decision will probably seem unfair to the Claimant. But it follows the law and is consistent with the purposes of sections 29 and 30 of the EI Act. Having a good reason to leave a job isn't the same as having just cause under the EI Act.[21] While the Claimant might have had good cause for quitting his job when he did, he didn't have just cause under the EI Act.

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[18] Listen to the hearing recording beginning at 25:00.
[19] Listen to the hearing recording at 22:15 and 47:26.
[20] See *Canada (Attorney General) v Patterson*, A-765-95.
[21] See *Canada (Attorney General) v Imran*, 2008 FCA 17; *Canada (Attorney General) v Laughland*, 2003 FCA 129; and *Tanguay v Unemployment Insurance Commission*, A-1458-84.

[56] The courts have said that workers who transform a risk of unemployment into a certainty should not get EI benefits.[22] EI benefits are for people who are involuntarily unemployed.[23] In this case, the Claimant made the risk of his unemployment certain. I appreciate he wanted time off to recuperate before his new job. But he can't quit his job without just cause and expect to get two or three months of EI benefits for that personal reason. That would go against the purposes of the EI Act.

Conclusion

[57] I am dismissing the Claimant's appeal.

[58] The General Division made an important error of fact. I made the decision the General Division should have made.

[59] My decision doesn't change the outcome in the Claimant's appeal. I decided he voluntarily left his job without just cause. This means he is disqualified from getting EI benefits.

Glenn Betteridge
Member, Appeal Division

[22] See *Canada (Attorney General) v Langlois*, 2008 FCA 18; and *Canada (Attorney General) v Marier*, 2013 FCA 39.
[23] See *Canada (Canada Employment and Immigration Commission) v Gagnon*, [1988] SCR 29.