



Citation: *KB v Canada Employment Insurance Commission*, 2024 SST 551

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: K. B.

Respondent: Canada Employment Insurance Commission
Representative: Julie Villeneuve

Decision under appeal: General Division decision dated
January 23, 2024 (GE-23-3483)

Tribunal member: Glenn Betteridge

Type of hearing: Teleconference

Hearing date: May 14, 2024

Hearing participant: Respondent's representative

Decision date: May 16, 2024

File number: AD-24-151

Decision

[1] I am allowing K. B.'s appeal and sending his case back to the General Division to be reconsidered by a different member.

Overview

[2] K. B. is the Claimant in this case. He made a claim for Employment Insurance regular benefits after he left his job.

[3] The Canada Employment Insurance Commission (Commission) decided he voluntarily left his job without just cause (in other words, a reason the law accepts). So, it didn't pay him benefits.

[4] He appealed the Commission's decision to the Tribunal's General Division. It dismissed his appeal. He then appealed to the Appeal Division, which gave him permission to appeal.

[5] The Commission agrees the General Division made an error in its decision. It says I should send the Claimant's case back to the General Division to reconsider.

Matter I have to consider first: hearing went ahead without the Claimant

[6] The Tribunal scheduled a teleconference hearing and sent the parties a notice of hearing.¹

[7] On the day and at the time of the hearing, the Commission's representative and I logged in to the teleconference. The Claimant didn't. So, I asked the Tribunal's staff to call the Claimant, which they did twice. But the Claimant didn't answer.

¹ See the April 15, 2024, notice of hearing at AD0.

[8] The *Social Security Tribunal Rules of Procedure* (Rules) say I can go ahead with an oral hearing without a party if I find the party received the notice of hearing.² The Rules also tell me to make the appeal process as simple and quick as fairness allows.³

[9] I reviewed the Tribunal's file that shows the activity in the Claimant's appeal. Based on the information and documents in the file, I was of the opinion it was more likely than not the Claimant received the notice of hearing.

[10] So, I went ahead with the hearing without the Claimant.

The Commission agrees the General Division made an error

[11] On his appeal form, the Claimant said the General Division made an important error of fact.⁴ In his written arguments, he said the General Division misunderstood his situation and applied the wrong case.⁵

[12] In its written argument, the Commission said the General Division made an error when it dismissed the Claimant's appeal.⁶ It also said the General Division made an error of law when it didn't outline in its decision the reasonable alternative it considered.⁷ At the hearing, the Commission's representative confirmed its position.

[13] I accept the Commission's concession that the General Division made a legal error.⁸

² Section 58 of the *Social Security Tribunal Rules of Procedure* (Rules) says: "An oral hearing may take place without a party if the Tribunal is of the opinion that the party received the notice of hearing."

³ See section 8 of the Rules.

⁴ See AD1-4.

⁵ See AD4-3.

⁶ See AD3-1.

⁷ See AD3-3.

⁸ A legal error is a ground of appeal under section 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

[14] The General Division must give reasons for its decision.⁹ The General Division makes a legal error when it doesn't give adequate reasons for its decision.¹⁰

[15] In a voluntary leaving appeal, the Commission has to show the person voluntarily left (quit) their job. If the Commission shows that, then the person has to show they have just cause for voluntary leaving in all the circumstances that existed at the time they left their job.¹¹ The courts have said this means that the person has to show they had no reasonable alternative to quitting.¹²

[16] At the General Division, the Commission argued the Claimant had three reasonable alternatives to quitting:

- request a transfer
- look for cheaper accommodation
- secure employment in North Bay before quitting his job and moving¹³

[17] The General Division correctly stated the legal test for just cause (paragraph 6). Then it made two findings that the Claimant had a reasonable alternative:

[29] I find that the Appellant had reasonable alternatives available to him other than leave [*sic*] his employment when he did. His leaving when he did not meet any of the allowable reasons outlined in section 29 (c) of the Act.

[...]

[33] Based on the evidence and the submissions of both parties, I find that the Appellant had reasonable alternatives to quitting when he did. He therefore did not show just cause for voluntarily leaving his employment. As a result, he is disqualified from receiving regular benefits. (**Tanguay A-1458-84**)

⁹ See section 54(2) of the DESD Act.

¹⁰ See *Doucette v Canada (Minister of Human Resources Development)*, 2002 FCA 292, at para 6, citing *R v Sheppard*, 2002 SCC 26. See also *Sennikova v Canada (Attorney General)*, 2021 FC 982, at paras 62 and 63; and *Marrone v Canada (Attorney General)*, 2008 FCA 216, at paras 1–3.

¹¹ See section 29(c) of the *Employment Insurance Act*.

¹² See *Canada (Attorney General) v White*, 2011 FCA 190.

¹³ See GD4-4.

[18] The General Division also cited court decisions, some of which identify reasonable alternatives in the particular facts of the case (paragraphs 24, 32, and 37).

[19] But the General Division didn't meaningfully analyze the law and the evidence. It didn't link the decisions it cited to the evidence before it. It didn't address the Commission's arguments about reasonable alternatives. And it didn't clearly state the reasonable alternative that the Claimant had in the circumstances that existed at the time he quit.

[20] As a result, the General Division's reasons don't adequately support its finding that the Claimant didn't have just cause for quitting when he did. This means the General Division made a legal error.

Fixing the error by sending the case back to the General Division to reconsider

[21] The law gives me the power to remedy (fix) the General Division's error.¹⁴ In appeals like this one, I will usually send the case back to the General Division to reconsider, or make the decision the General Division should have made (based on the evidence before the General Division without considering any new evidence).

[22] The Claimant didn't say in his appeal form or his written arguments how he wanted me to fix the errors he argued the General Division made.

[23] The Commission argued I should send the case back to the General Division to reconsider.

[24] I agree with the Commission.

[25] The Rules say the Tribunal hears appeals in a way that allows parties to participate fully in the appeal process.¹⁵ The Tribunal should actively adjudicate

¹⁴ See section 59(1) of the DESD Act.

¹⁵ This paragraph refers to sections 6, 8(2), and 17 of the Rules.

appeals. This means the Tribunal can decide what issues need to be addressed, give information about the laws that apply to the appeal, and ask the parties questions.

[26] I am sending the case back to the General Division to reconsider because it seems the Claimant didn't get a full opportunity to present evidence and arguments about "reasonable alternatives" to quitting when he did. I listened to the hearing. It lasted less than 20 minutes. The Claimant wasn't represented. The General Division member didn't explain the legal test for just cause (no reasonable alternative) that the Claimant had to meet to be successful in the appeal.

Conclusion

[27] I am allowing the Claimant's appeal.

[28] The General Division made a legal error. I am fixing that error by sending the Claimant's case back to the General Division to be reconsidered by a different member.

Glenn Betteridge

Member, Appeal Division