Citation: *YG v Canada Employment Insurance Commission*, 2024 SST 1328

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Y. G.
Respondent:	Canada Employment Insurance Commission
Representative:	Jessica Murdoch

Decision under appeal:	General Division decision dated May 17, 2024 (GE-24-332)

Tribunal member:	Pierre Lafontaine
Type of hearing:	In person
Hearing date:	October 4, 2024
Hearing participants:	Appellant Respondent's representative
Decision date:	November 1, 2024
File number:	AD-24-415

Decision

[1] The appeal is allowed. The Claimant (Appellant)'s claim for benefits should not be reconsidered. This means that the Claimant is not disqualified from receiving Employment Insurance (EI) benefits starting on May 22, 2022.

Overview

[2] The Claimant quit his job at SS on May 22, 2022. He received regular EI benefits between May 22, 2022, and August 31, 2022. He started a new job as a research program manager on September 1st, 2022, but was laid off on November 18, 2022.

[3] The Claimant made a renewal claim for benefits on November 18, 2022. He received EI benefits from November 20, 2022, to December 24, 2022. In his renewal application, the Claimant reported that he stopped working at SS on May 10, 2022.

[4] The Commission sent a questionnaire to the Claimant concerning the end of his employment at SS. The Claimant said that he quit his job because he wanted to find a suitable job in his field of research and wanted to focus on his job search.

[5] On March 15, 2023, the Commission decided the Claimant was disqualified from receiving benefits because on May 22, 2022, he left his job voluntarily without just cause. It imposed a retroactive disqualification starting May 22, 2022. This resulted in an overpayment debt. The Claimant disagreed and appealed to the General Division of the Tribunal.

[6] The General Division determined that the Claimant ought to have known there was no entitlement to the benefits received. It concluded that the Commission exercised its power judicially when it decided to reconsider the Claimant's claim. Benefits were paid because the Claimant didn't declare his end of employment. The General Division further concluded that the Claimant did not have just cause to leave his employment.

[7] The Appeal Division granted the Claimant leave to appeal of the General Division's decision to the Appeal Division. He submits that there is no evidence that he

made misrepresentations or ought to have known he wasn't entitled to benefits. He puts forward that he is a man of honesty and not counting on EI benefits. He just wanted to search and find a suitable job in his field of research. The Claimant submits that he had just cause to leave his job because of serious transportation issues.

[8] I must decide whether the General Division ignored evidence and whether it made an error in law when it concluded that the Claimant did not have just cause to leave his job. I must also decide whether the General Division erred when it concluded that the Commission exercised it discretion judicially when it decided to review the Claimant's claim.

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

Issues

[10] Issue no 1: Did the General Division ignore evidence and make an error in law when it concluded that the Claimant did not have just cause to leave his job?

[11] Issue no 2: Did the General Division err when it concluded that the Commission exercised it discretion judicially when it decided to review the Claimant's claim?

Preliminary observation

[12] It is well established that I can only consider the evidence that was presented to the General Division to decide the present appeal. The Appeal Division and has a limited jurisdiction.[1]

Analysis

Appeal Division's mandate

[13] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 58(1) of the *Department of Employment and Social*

[1] *Sibbald v Canada (Attorney General)*, 2022 CAF 157.

Development Act, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.[2]

[14] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.[3]

[15] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, I must dismiss the appeal.

Did the General Division ignore evidence and make an error in law when it concluded that the Claimant did not have just cause to leave his job?

[16] The issue of whether someone has just cause to voluntarily leave an employment depends on whether they had no reasonable alternative to leaving, having regard to all the circumstances.

[17] The General Division found that the Claimant voluntarily left his job. He had a choice to stay or go at that time. He chose to leave his job.

[18] The General Division found that the Claimant left his job at SS because he wanted to focus on his job search. This is the reason he wrote on his application for benefits and on the voluntary leaving questionnaire.[4] This is also the reason he gave to the Commission. The Claimant stated that he was not able to concentrate in applying for jobs while working at restaurant SS. He needed time to prepare for job applications and interviews.[5]

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[2] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.
[3] *Idem*.
[4] GD3-8, GD3-17.
[5] GD3-20.

[19] In his application for reconsideration, the Claimant further explained that he took some time off from SS to find another job and that he would come back if he was not successful. He got another job offer May 30, 2022, in research at the MU, starting from September 1st, 2022. He did not go back to work at SS. During the summer months, he prepared for his new job and went to attend some lab meetings.[6]

[20] The employer confirmed the Claimant quit because he found another job.[7]

[21] In his application to appeal to the General Division, the Claimant gave several reasons for leaving his employment. He notably mentioned that he lived 26.3 km from his work which created transportation problems. He could not afford to use a car to go to work because of increasing gas prices and had no one to carpool with. Commute in public transportation took him about three hours per day.

[22] The General Division considered that the Claimant said in his application to appeal that he quit his job for various reasons. But it found the evidence showed he mainly quit his job to have time to focus on his job search. The General Division found that the other reasons he mentioned were inconveniences or different aspects of his job that he didn't like. It found that the transportation issues from Montreal to Laval already existed when the Claimant decided to accept this job.

[23] The General Division determined that the Claimant had reasonable alternatives to leaving his job when he did. He could have kept working at SS until he started his new job. Or he could have found another job, closer to his home, before quitting.

[24] The General Division concluded the Claimant did not have just cause for leaving his job.

[25] I see no error made by the General Division. Its decision on the issue of voluntary leaving is supported by the evidence, the law, and applicable case law.

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[6] GD3-27.
[7] GD3-19, GD3-31.

[26] The Claimant could have easily anticipated, when he accepted the job at SS, what the transportation requirements would be to get from his home in Montreal to Laval, including the possible fluctuation of gas prices.

[27] A long line of authority has established that transportation problems do not constitute just cause for leaving a job.[8]

[28] As further stated by the General Division, a person who accepts a job while aware that this position has certain conditions can't later rely on the existence of those conditions as just cause for leaving that job.[9]

[29] The evidence shows that the Claimant left his job on May 22, 2022, because he found a job in his field starting on September 1st, 2022. He chose to leave to prepare for his new job during the summer months. He did not talk to his employer about his new situation before leaving to find a solution to his work schedule. In doing so, he voluntarily placed himself in a situation of unemployment.

[30] Furthermore, the Claimant did not have reasonable assurance of another employment in the immediate future when he left his job at SS. The time lapse in question was three months. This delay is incompatible with the "immediate future" requirement provided for in section 29(c) v) of the *Employment Insurance (EI) Act*.[10]

[31] It is also well established that personal reasons do not provide a claimant with just cause for leaving employment. A preference for a specific form of employment where there is no urgency to leave the present employment is a personal reason that does not provide with just cause for leaving employment.[11]

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[8] *M. U. v Canada Employment Insurance Commission*, 2019 SST 39 (CanLII), *C. B. v Canada Employment Insurance Commission*, 2017 CanLII 91800 (SST), CUBs 16658A, 26708, 40246, 58249A, 64665 and 72413.
[9] See Lau, A-584-95.
[10] Section 29(c) v) of the Employment Insurance Act. See *Canada (Attorney General) v Lessard*, 2002 FCA 469, where the Court refers to employment "occurring or done at once or without delay" and "nearest in time or space".
[11] *M.B. v Canada Employment Insurance Commission*, 2014 SSTGDEI 28, CUB 66322, CUB 14262A.

[32] For these reasons, I find that the Claimant's appeal on the issue of voluntary leaving his employment at SS is without merits.

Did the General Division err when it concluded that the Commission exercised it discretion judicially when it decided to review the Claimant's claim?

[33] The Commission's reconsideration powers are set out in section 52 of the EI Act. This section provides that the Commission may reconsider a claim for benefits within 36 months of the benefits having been paid or payable.

[34] Case law has established that the only restriction on the Commission's reconsideration power under section 52 of the EI Act is the time limit. Therefore, the Commission can reconsider a claim under section 52 even if there are no new facts. In other words, it can withdraw its earlier approval and require claimants to repay the benefits that were paid pursuant to such approval.

[35] As stated by the General Division, the decision to reconsider a claim under section 52, is a discretionary decision. This mean that although the Commission has the power to reconsider a claim, it does not have to do so.

[36] The law says that discretionary powers must be exercised in a judicial manner. This means that when the Commission decides to reconsider a claim, it cannot act in bad faith or for an improper purpose or motive, consider an irrelevant factor or ignore a relevant factor or act in a discriminatory manner.

[37] The Commission has developed a policy to help guide how it exercises its discretion to reconsider decisions under the EI Act. The Commission says the reason for the policy is "to ensure a consistent and fair application of section 52 of the EI Act and to prevent creating debt when the claimant was overpaid through no fault of their own." The policy provides that a claim will only be reconsidered when:

- benefits have been underpaid;
- benefits were paid contrary to the structure of the EI Act;

- benefits were paid as a result of a false or misleading statement;
- the claimant ought to have known there was no entitlement to the benefits received.

[38] Before the General Division, the Commission submitted that it was justified to reexamine the claim retroactively since the Claimant never provided the information that he quit his job at SS before November 18, 2022, and that in doing so, the Commission exercised its discretion judicially.

[39] The General Division correctly indicated that the policy says that the reason for separation falls outside the definition of structure of the EI Act.[12] This would not prevent the establishment of a benefit period.

[40] The General Division determined that the Claimant's statements weren't false or misleading. Variations or small discrepancies between earnings reported and earnings received could not be viewed by the Commission as false or misleading. It also determined that the Claimant could not report his end of employment because the reporting service never asked him to.

[41] Based on the evidence, the General Division determined that the Commission could not reasonably conclude that a false or misleading statement had been made by the Claimant in connection with the benefits requested.

[42] The Commission further submitted that the Claimant ought to have known he might not be entitled to benefits, which is another circumstance in the reconsideration policy which can trigger a retroactive reconsideration of a claim. It argued that on every claimant's report where the Claimant reported earnings, the question about whether he stopped working for an employer was asked, therefore, the Claimant should have been aware that he had the obligation to declare any separation from employment.

[12] Section 17.3.3.2 of the *Digest of Benefit Entitlement Principles*.

[43] In addition, the Commission pointed out that in the Rights and Responsibilities section of the application form, the Claimant was informed that one of his obligations was to declare any separation from employment, and the reason for separation.

[44] The Claimant said that since there was no question about end of employment asked by the reporting system, he didn't know that he had to inform the Commission about it. He truly believed that the Commission would have known that his employment came to an end because he stopped reporting earnings from his job at SS after May 22, 2022.

[45] The General Division determined that it was the Claimant's responsibility to be informed about the system and to be aware of his rights and responsibilities within the system when applying for benefits. One of them is to notify the Commission of any separation from employment and the reasons for the separation.

[46] The General Division found that the Claimant should have known that he wasn't entitled to benefits because he quit his job. It based its determination on the fact that the standard application form for EI benefits contains a list of Rights and Responsibilities. It referred to the Claimant's renewal application received on November 18, 2022.

[47] I find three things wrong with this conclusion of fact. Firstly, the Claimant's initial application on February 25, 2022, was not produced in evidence by the Commission, so there is no evidence that the Claimant was in fact informed from the beginning of his Rights and Responsibilities.

[48] Second, the General Division relied on the content of a standard application form for benefits without evidence that it was in fact presented to the Claimant at the time of his initial claim to determine that he should have known about his Rights and Responsibilities.

[49] Third, because the Commission did not file the February 25, 2022, application form, the General Division wrongfully relied on the November 18, 2022, application form to determine that the Claimant was initially informed that one of his obligations was to declare any separation from employment, and the reason for separation.

[50] I must reiterate that the Commission's "representations" submitted to the General Division do not constitute at any time evidence of the facts that they summarize. The facts alleged in its representations must be supported by the evidence on file.[13]

[51] As mentioned previously, there was no evidence before the General Division to support a conclusion that the Claimant was asked about the end of his employment when he reported no earnings, and that he was aware of his responsibility to report any end of employment. The only evidence on file is a communication by email dated March 8, 2022, between the Claimant and the Commission about information related to the need for him to complete his reports to receive benefits.[14]

[52] Therefore, I find that 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 when it found that the Claimant should have known that he wasn't entitled to benefits and that the Commission had exercised its discretion judicially.

[53] I am therefore justified to intervene.

Remedy

There are two ways to fix the General Division's errors

[54] When the General Division makes an error, the Appeal Division can fix it in one of two ways: (1) It can send the matter back to the General Division for a new hearing; or (2) it can give the decision that the General Division should have given.[15]

The record is complete enough to decide this case on its merits

[55] I am of the view that the record is complete. Both parties had the opportunity to present their case before the General Division. I will therefore give the decision that the General Division should have given.

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[13] *M. I. v Canada Employment Insurance Commission*, 2015 SSTAD 1262.
[14] RGD7-10-12.
[15] See section 59(1) of the *Department of Employment and Social Development Act*.

Did the Commission act judicially? Should I exercise the discretion to reconsider the claim?

[56] I am aware that the reconsideration policy does not require rigorous proof that a claimant knew he was not entitled to benefits for the Commission to reconsider a claim under its policy. Despite this, I cannot see how the evidence presented to the General Division demonstrates that the Claimant should have known that he was not entitled to the benefits he received.

[57] For the reasons previously mentioned, I find that the Commission ignored relevant factors and therefore did not exercise its discretion judicially.

[58] Having found that the Commission didn't properly exercise its discretion, I will go on to decide whether that discretion should be exercised in this case. This is because I am giving the decision that the General Division should have given, and the General Division can give the discretionary decision that the Commission should have given.

[59] I understand that if the Claimant had declared that he had quit his job in May 2022, this would have triggered an investigation on the reasons why the Claimant quit his job, and maybe the Commission would have disqualified him from receiving benefits.

[60] However, the policy says that the reason for separation falls outside the definition of structure of the EI Act.[16] No benefits were paid contrary to the basic structure of the EI Act.

[61] It is relevant that the Claimant's statements weren't false or misleading. Variations or small discrepancies between earnings reported and earnings received could not be viewed as false or misleading. He did not report his end of employment because the reporting service never asked him to. No evidence was filed by the Commission regarding the Claimant's acceptance application of his Rights and

[16] section 17.3.3.2 of the *Digest of Benefit Entitlement Principles*.

Responsibilities to declare the end of any employment on the date he initially applied for EI benefits.

[62] It is also relevant that the Claimant could not have known that he wasn't entitled to the benefits received. He could not report his end of employment because the reporting service never asked him to. No evidence was produced by the Commission to show that he had read his responsibilities and had agreed to them on the date he initially applied for EI benefit on February 25, 2022.[17] Furthermore, Voluntary leaving one's employment does not necessarily lead to a disqualification from EI benefits.

[63] Furthermore, and most importantly, the evidence shows that the Claimant declared he had stopped working at SS in his renewal application of November 18, 2022, when he was finally prompted by the system to do so.

[64] The evidence shows that the Claimant reported to the Commission regularly, was not initially informed of his responsibility to declare any end of employment, declared no income from working at SS after May 22, 2022, answered all questions about why he left his job at SS when asked, and sincerely believed he was under no obligation to continue working at SS while he looked for suitable employment in his field of biomedical research. So, the overpayment of benefits didn't really result from the Claimant's fault.

[65] Finally, I have considered the importance of consistency and predictability. The courts have repeatedly supported the use of internal administrative guidelines "to guarantee some consistency nationally and avoid arbitrariness."[18] The Commission's policy says not to reconsider a claim if the benefits weren't paid contrary to the structure of the Act, there wasn't a false or misleading statement, and the Claimant couldn't have known there was no entitlement.

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[17] The evidence shows that the only communication between the Claimant and Commission was an email dated March 08, 2022, RGD7, 10-12.
[18] For example, *Canada (Attorney General) v Gagnon*, 2004 FCA 351, *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

[66] Under that policy, the Claimant's claim for benefits would not be reconsidered. I see no reason to depart from the usual policy approach in this case.

[67] Having considered the relevant factors and the importance of consistency, I have decided that the Claimant's claim for benefits should not be reconsidered. This means that the Claimant is not disqualified from receiving EI benefits starting on May 22, 2022.

Conclusion

[68] The appeal is allowed. The Claimant's claim for benefits should not be reconsidered. This means that the Claimant is not disqualified from receiving EI benefits starting on May 22, 2022.

Pierre Lafontaine
Member, Appeal Division