Citation: *Canada Employment Insurance Commission v HK*, 2025 SST 342

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Jessica Murdoch
Respondent:	H. K.

Decision under appeal:	General Division decision dated December 18, 2024 (GE-24-3766)

Tribunal member:	Stephen Bergen
Type of hearing:	Teleconference
Hearing date:	March 14, 2025
Hearing participants:	Appellant Respondent's representative
Decision date:	April 9, 2025
File number:	AD-25-10

Decision

[1] I am dismissing the appeal. The General Division did not make an error when it found that the Claimant had just cause for leaving her employment.

Overview

[2] The Appellant is the Canada Employment Insurance Commission, which I will call the Commission. H. K. is the Respondent. I will call her the Claimant because this application is about her claim for Employment Insurance (EI) benefits.

[3] The Claimant had a full-time job and a part-time job. She applied for EI benefits after she lost her full-time job. The Commission discovered that the Claimant later quit her part-time job, and it decided that she should not have received benefits from that time forward. According to the Commission, she did not have just cause for leaving the part-time job. The Claimant asked the Commission to reconsider, but it would not change its decision.

[4] The Claimant next appealed to the General Division of the Social Security Tribunal, which allowed her appeal. It found that she had just cause for quitting because she had no reasonable alternative to leaving. The Commission disagreed and appealed the General Division decision to the Appeal Division.

[5] I am dismissing the appeal. The General Division did not make an error of law or fact.

Issues

[6] The issues in this appeal are whether the General Division made an error of law in any of the following ways:

a) By reaching contradictory findings, namely: that the Claimant knew her hours could change, and that she had experienced a significant modification to her schedule of work and salary?

b) By citing inapplicable jurisprudence?

c) By considering evidence that was not relevant to the circumstances that existed at the time that the Claimant left her employment?

d) By not evaluating whether there were reasonable alternatives to leaving that may have addressed the Claimant's mental health concerns?

Analysis

Legal principles applicable to all appeals

[7] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

a) The General Division hearing process was not fair in some way.
b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
c) The General Division made an error of law when making its decision.
d) The General Division based its decision on an important error of fact.[1]

[8] The Commission argued that the General Division made errors of law and of fact.

Errors of law

– **Contradictory findings**

[9] The General Division did not make an error of law by making contradictory findings.

[10] The General Division found that the Claimant's work hours had been reduced over time. It also found that there were weeks when she received zero hours. It found that the Claimant's employer cancelled shifts that had been scheduled for her by calling her at home, and that it had also cancelled shifts on two occasions when the Claimant

[1] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

arrived ready to work. The General Division appeared to accept the Claimant's evidence that other staff—even those hired after her—were not likewise sent home when they showed up for their shifts.

[11] On the basis of this evidence, the General Division found that the Claimant experienced a significant modification to her schedule.

[12] The Commission argues that this conclusion is inconsistent with the General Division's finding that the Claimant knew that her hours could change based on business needs. It argues that this inconsistency is an error of law.

[13] I disagree. The Commission's argument implies that it is impossible for a claimant to have a significant modification in hours or earnings, unless they have first been formally guaranteed a set number of hours or a minimum amount of earnings. This argument depends on interpreting "significant modification" in such a way that a claimant's schedule, or scheduled hours, may only be determined with reference to their original agreement with the employer.

[14] The General Division did not see it that way. It did not presuppose that the original agreement was the only reference point possible. Instead, it focused on how the employer had periodically scheduled the Claimant to work certain hours and then cancelled the hours it had scheduled. This was the basis for the General Division's finding that the Claimant experienced a significant modification in her hours and earnings, despite the fact that she had not been guaranteed a minimum number of hours.

[15] The *Montreuil* decision of the Federal Court of Appeal offers some limited assistance with the interpretation of "significant modification." The claimant in the *Montreuil* case argued that she experienced a significant reduction in salary, even though it was her own union which had negotiated the terms of that reduction. *Montreuil* was reviewing a decision of the Umpire. The Umpire had found that the claimant did not have just cause for leaving because she had agreed (through her union) to the reduction. The Court disagreed with the Umpire. It upheld the original decision of the

Board of Referees (which had found that she had just cause because of the salary reduction). The Court stated that a claimant's consent to a salary reduction is an "extremely important consideration," but that it is "not conclusive."[2]

[16] Although the facts in *Montreuil* differ significantly from the facts in this case, *Montreuil* case stands for a principle that may be applied here: it is possible for a claimant to assert a "significant modification" even where they have consented to that modification. In this case, the Claimant originally agreed, or consented, to a continuing arrangement under which her employer had not guaranteed her a minimum number of hours or minimum earnings. This necessarily means that the Claimant's hours of work could not significantly change *from the hours to which she consented.* This is the Commission's argument, as I understand it.

[17] However, the absence of a guarantee does not necessarily mean that the Claimant could not experience a significant modification from the hours or earnings that she had been receiving in fact, or that she had come to expect.

[18] This Tribunal has previously considered whether a part-time, casual claimant had just cause for leaving or taking leave.[3] *In RW v Canada Employment Insurance Commission*, the employer progressively reduced the hours of work scheduled for the claimant, to the point where she was not being scheduled at all.

[19] The Appeal Division found that the General Division made an error because it failed to consider whether the employer had significantly reduced her hours. It returned the matter to the General Division to reconsider. When the General Division made a new decision, it allowed the appeal. It accepted that the claimant had experienced a significant modification in hours resulting in a significant reduction in wages (despite her casual, part-time status).

[20] I have found no legal authority that says that a significant modification of terms of salary may not reasonably be understood to include the loss of earnings that results

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[2] *Montreuil v. Canada (Commission de l'Emploi et de l'Immigration),* A-868-96.
[3] See RW v Canada Employment Insurance Commission, 2023 SST 1759; see also RW v Canada Employment Insurance Commission 2024 SST 257.

when an employer repeatedly withdraws scheduled hours or shifts. I have likewise found no authority that insists that a claimant can only establish a significant modification in hours or earnings by comparing the hours made available to them against the standard of a fixed guarantee of hours or earnings.

[21] It was open to the General Division to interpret "significant modification" in the way that it did. Its findings are not contradictory in light of that interpretation.

– **Improper application of case law (jurisprudence)**

[22] The General Division did not make an error of law by considering jurisprudence that was inapplicable.

[23] The Commission suggested that it was an error for the General Division to have referred to *LC v Canada Employment Insurance Commission (LC)* because the facts were different. In *LC,* the claimant and his employer had a formal agreement on the claimant's schedule, and the employer unilaterally changed his scheduled hours. In this case, the Claimant was never given a formal guarantee of hours.

[24] I do not find that the General Division made an error of law by referring to "inapplicable" jurisprudence. I agree that that there are significant differences between the facts of this appeal and the facts in *LC*. However, the General Division considered *LC* only to be "relevant." It did not suggest that the facts in *LC* were so similar that it was obliged to follow its decision. Nor does the General Division decision imply that the Claimant's circumstances were just as compelling as the permanent reduction of hours or loss of shifts described in *LC*.

[25] The General Division referred to *LC* when it decided that the Claimant's periodic loss of schedule shifts was a significant modification to her hours and earnings. In the part of the decision that footnoted *LC*, the General Division summarized the *LC* decision principle as follows: "[A] change in schedule that would significantly reduce an appellant's earnings was a significant change that justified leaving."

[26] In my view, the General Division used LC to support the connection between reduced hours and reduced earnings. The EI Act identifies a "significant modification of terms and conditions respecting wages or salary" as one of the circumstances which is relevant to just cause. The language of the EI Act references "wages or salary," only. It does not refer to a significant modification in "hours" or "shifts."

[27] The Commission challenged the notion that the limited hours and earnings available to the Claimant could be "just cause." It suggested that there was a "line of authority," specifically including the *Tremblay* decision of the Federal Court of Appeal, supporting its argument.[4] The *Tremblay* decision says that it is not just cause for a claimant to leave their employment because it does not offer an adequate salary.

[28] I cited the *Montreuil* decision earlier in this decision. *Montreuil* stated explicitly that its conclusion was not inconsistent with its earlier decision in *Tremblay.* Both decisions were about the claimant's dissatisfaction with their salary. I suspect the reason the Court could hold in favour of the claimant in *Montreuil* was that she left her job due to a *reduction* in her salary. The claimant in its earlier *Tremblay* decision had been dissatisfied with his *regular* salary.

[29] The General Division was persuaded by what it understood to be an effective *reduction* in the Claimant's scheduled hours of work and earnings. It did not justify its decision by saying the Claimant was simply dissatisfied with her status as a part-time, casual employee.

[30] The factual differences between this appeal and *LC* are not relevant to the way in which the General Division used *LC*. The General Division did not make an error of law by referring to *LC*.

– **Considering irrelevant evidence**

[31] The General Division did not make an error of law by considering irrelevant evidence.

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[4] *Canada (Attorney General) v Tremblay*, (A-50-94).

[32] The Commission argues that the General Division should not have considered how the Claimant found other full-time employment by June 19, because it was irrelevant to whether the Claimant had just cause for leaving. It rightly stated that "only information relevant to the circumstances which existed at the time the claimant left their employment are relevant to a finding of just cause."[5]

[33] However, I disagree that the Claimant's evidence could not have been relevant to the circumstances that existed when she left.

[34] To be relevant, the evidence must be "**relevant to the circumstances**" which existed at the time the claimant left her employment. It does not have to be evidence **of the circumstances** existing at the time she left her employment, and it does not have to be evidence that she could have obtained at the time she left her employment.

[35] The General Division said that the Claimant continued to look for work **while employed part-time** and it noted that she started a new full-time job on June 19, 2024. It said that this means that she wanted to work full-time and was actively searching for work. It appears that the General Division drew inferences from the fact that she found work so quickly after she left her job. It inferred that she had wanted to work and had been active in her job search, before she even left her job.

[36] One might argue that the General Division gave too much weight to the fact that the Claimant found a job relatively quickly, or that the inference as to her pre-quitting intention and activities is a weak one. However, I cannot interfere in how the General Division weighed the evidence.[6] It was not an error of logic or law to use the evidence of later events to help prove earlier facts.

[37] In any event, the General Division did not need to *infer* that she wanted to work full-time or that she looked for work from evidence that she started a new job on June 19. Even if it had ignored her new job, it might have relied on other evidence in the record to support its findings. The Claimant testified that she asked her employer for

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[5] See AD5-5, citing *Canada (Attorney General) v. Furey*, [1996] F.C.J. No. 971.
[6] See, for example: *Tracey v Canada (Attorney General),* 2015 FC 1300; *Hideq v Canada (Attorney General)*, 2017 FC 439.

more hours and that she wanted full-time work. She testified that she was looking for work even while still employed, and that she became more active in her search after she left her job.[7]

– **Not evaluating reasonable alternatives that may have addressed the Claimant's mental health.**

[38] The Commission's final argument is that the General Division made an error of law by not evaluating all of the Claimant's reasonable alternatives to leaving.

[39] The General Division considered all the reasonable alternatives that the Commission argued in its submissions to the General Division. It found that asking for a "leave of absence" was not a reasonable alternative because she wanted more hours and not fewer. In answer to the Commission's argument that she could have looked for work while she was still in her job, the General Division found that she was already doing so.

[40] The General Division accepted that the Claimant's situation was increasingly intolerable. It noted that the Claimant felt unwanted because the employer would cancel her shifts or send her home when she arrived for shifts. The General Division concluded that "it wasn't reasonable to expect her to remain in a part-time job that was affecting her mental health and ability to seek other employment."

[41] Since the General Division considered how the Claimant's work was affecting her mental health, the Commission argues that it should also have considered whether the Claimant could have sought medical advice or asked her employer to accommodate her health concerns.

[42] This is the first time the Commission has suggested that seeking medical advice or accommodations would have been a reasonable alternative to leaving. When the Commission submitted its written arguments to the General Division, it did not identify this as one of the Claimant's reasonable alternatives.

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[7] Listen to the audio recording of the General Division hearing at timestamps, 00:42:55, 00:43:35; and 00:43:45, 00:43:45.

[43] It did not participate in the General Division hearing, so it could not respond when the Claimant testified about how her mental health was affected. The Claimant spoke of how she was affected by her dwindling shifts, the last-minute cancellation of shifts, and about being sent home in front of other staff. She said she became more desperate in May after she lost her other full-time job.[8] She agreed that she had become more anxious because she required more income.[9] Before she quit, she asked her employer to give her more hours, but her employer was unresponsive. She also said she tried to find a job that would give her more hours. She said that the stress of her employment situation impaired her efforts to find work.[10]

[44] The Commission is correct that the General Division did not consider whether the Claimant could have sought medical advice or asked her employer to accommodate her health concerns. However, the General Division does not have a positive obligation to evaluate every alternative imaginable, reasonable or not. In my view, it could only evaluate those alternatives to leaving that were apparently or demonstrably reasonable.

[45] The General Division was not required to consider whether the Claimant could have sought medical advice or accommodations from her employer. “Reasonable alternatives” have to be alternatives that have regard to “all the circumstances.” It is unclear how it could be a reasonable alternative to leaving for the Claimant to seek medical advice or accommodations, since they could not possibly have addressed her reason for leaving.

[46] The Claimant left because the employer was giving her almost no hours, and her lack of hours was at the root of her mental health concerns. The Commission has not explained what medical treatment or accommodation by the employer (who was unwilling to give her more hours) would remedy or mitigate the employer’s inclination to reduce her scheduled hours or withdraw scheduled hours.

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[8] Listen to the audio recording of the General Division hearing at timestamps 00:16:55.
[9] Listen to the audio recording of the General Division hearing at timestamps 00:23:50.
[10] Listen to the audio recording of the General Division hearing at timestamps 00:43:20, 00:45:25, and 00:46:35 respectively.

[47] The General Division did not consider whether Claimant could have sought medical advice or asked for accommodations for stress or anxiety from her employer, but this was not an error of law.

Conclusion

[48] I am dismissing the appeal. The General Division did not make an error that falls within the permitted grounds of appeal.

Stephen Bergen
Member, Appeal Division