Citation: *FA v Canada Employment Insurance Commission*, 2025 SST 432

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	F. A.
Respondent:	Canada Employment Insurance Commission
Representative:	Stephanie Tollefson

Decision under appeal:	General Division decision dated January 13, 2025 (GE-24-3999)

Tribunal member:	Stephen Bergen
Type of hearing:	Teleconference
Hearing date:	April 10, 2025
Hearing participants:	Appellant Respondent's representative
Decision date:	April 25, 2025
File number:	AD-25-72

Decision

[1] I am dismissing the appeal.

[2] The General Division made an important error of fact. I have corrected that error and substituted my decision for that of the General Division.

[3] I have reached the same conclusion as the General Division. The Claimant voluntarily left his employment without just cause. As a result, he is disqualified from receiving benefits.

Overview

[4] F. A. is the Appellant. I will call him the Claimant because this appeal is about his claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[5] The Claimant left his job as a branch manager for a roofing company in July 2024. He had been trying to negotiate changes to his working conditions and pay. He felt the employer was not responding to his concerns, so he offered to give his notice. The employer's Western Manager (his manager) accepted this as his resignation.

[6] When the Claimant applied for EI benefits, the Commission refused to pay him. It said that he had voluntarily left his employment without just cause.

[7] The Claimant disagreed that he quit his job and asked the Commission to reconsider. The Commission would not change its decision.

[8] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed his appeal, so he appealed the General Division decision to the Appeal Division.

[9] I am dismissing the Claimant's appeal. Although the General Division made an important error of fact and I have corrected that error, I have reached the same

conclusion as the General Division. The Claimant voluntarily left his employment without just cause.

Issues

[10] The issues in this appeal are:

a) Did the General Division make an important error of fact by misstating the Claimant's testimony?

b) Did the General Division make an important error of fact by relying on the July 9, 2024, text message?

Analysis

[11] 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]

Errors of fact

– **Misstatement of Claimant's testimony**

[12] The Claimant argues that the General Division made an error of fact when it stated that he answered "no" to questioning about whether he withdrew his "threat to quit." He asserts that he did not say this. He also asserts that he told the General Division how he had called the CEO of his employer to clarify that he had not quit.

[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).

[13] The Commission concedes that the General Division misstated the Claimant's testimony evidence.

[14] I agree. I find that the General Division misstated the Claimant's evidence. This was an important error of fact because it could have been important to the decision.

[15] The Claimant did **not** deny having withdrawn his threat to quit. When the General Division asked him whether he spoke to his employer to clarify that he was only negotiating and had not resigned, he answered that he had. He testified that he called the employer's CEO to respond to his manager's (July 15) text. This is the text stating that the employer was accepting the Claimant's two-weeks notice. [2]

[16] The Claimant said that he corrected the CEO's understanding. The CEO believed that the Claimant had given notice. The Claimant said he told the CEO that he had not given his notice, but that he would give his notice if they continued to ignore his concerns.[3]

[17] He suggested to the CEO that the employer might accommodate him by having him work as a field supervisor, and he said that the CEO was open to the idea.[4] The CEO said that the employer would lay him off if things didn't work out.[5] The Claimant also said that he texted back and forth with his manager, discussing what he expected to be paid as a supervisor.[6]

[18] According to the Claimant's testimony, it would seem that he made clear efforts to clarify that he had not meant to give notice, and that his employer accepted his clarification. In the following days, the employer negotiated with the Claimant to modify the terms of his employment. Apparently, the employer concluded at some point that it could not satisfy the Claimant, so it returned to its original position that the Claimant had given notice, and that it had accepted the Claimant's notice.

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[2] Listen to the audio record of the General Division recording at timestamp 01:07:30.
[3] Listen to the audio record of the General Division recording at timestamp 01:08:07.
[4] Listen to the audio record of the General Division recording at timestamp 01:10:00, 01:10:28.
[5] Listen to the audio record of the General Division recording at timestamp 01:09:00.
[6] Listen to the audio record of the General Division recording at timestamp 01:10:35.

[19] The Commission says that the General Division's mistake of fact could not have made a difference to the decision. I disagree.

[20] The General Division's decision that the Claimant should be disqualified for having voluntarily left without just cause depended on its finding that he quit his job. Its mistake of fact was relevant to this finding.

[21] If the General Division had correctly understood the Claimant's testimony, and accepted it as credible and generally reliable, the testimony evidence might have had enough weight in the eyes of the General Division to convince it that the Claimant did not voluntarily leave.

– **Misunderstanding of July 9 text message evidence**

[22] The Claimant also asserts that the General Division made an error of fact by relying on the July 9 text message evidence.[7] This was one of the texts provided to the Commission by the employer, which it claimed were texts between the Claimant and his manager.

[23] The unidentified writer of the text discussed salary demands involving a $23,000.00 annual increase, and threatened to go back to running their own business if their demands were not met. It is an ultimatum of sorts.

[24] The Claimant says he did not see this text evidence, and the General Division did not ask him about it. He asserts that the text was from someone else to his manager, and that it has nothing to do with him.

[25] The Commission responded that the text was in the documents before the General Division.[8] It argued that the Claimant had a full opportunity to discuss any evidence that he thought was incorrect, but he chose to accept it. It also noted that the

[7] See para 10 of the General Division decision and GD3-52.
[8] The text is in the reconsideration file document (GD3). This file is disclosed to the Claimant as a matter or course in appeals to the General Division. The Claimant did not assert he did not receive the reconsideration file.

Claimant confirmed receiving all of the documents for the appeal and that he indicated that he was aware the employer had provided documents and that he had read them.

[26] The Commission further notes that the General Division member read out the July 9 text to the Claimant, and that the Claimant confirmed he sent it.[9]

[27] I have listened to the audio recording of the General Division hearing and confirmed that the General Division member did read the July 9 text in its entirety to the Claimant. The Claimant interrupted the member after she had read the opening ultimatum from the text. The Claimant interrupted to say, “That was before.”[10] The member told him the date of the text was July 9, and the Claimant permitted the member to continue. He interjected only to say, “yes.” When the member read him the employer’s text response to the July 9 text, he seemed to acknowledge it in the same way. At no point did the Claimant object that the text was not from him, or that he knew nothing of the text.

[28] The General division did not make an error in considering the July 9 text or by attributing it to the Claimant. The employer provided the text as evidence of its communications with the Claimant, and the Claimant did not dispute this evidence until his argument to the Appeal Division.

Fairness

[29] The Claimant did not specifically argue that the General Division made an error of procedural fairness. However, I will briefly consider whether such an error was made because his submissions suggest that it was not fair that the General Division did not ask him about the July 9 text or if he sent it.

[30] The General Division did not act in a way that was procedurally unfair.

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[9] Listen to the audio record of the General Division recording at timestamp, 1:01:10.
[10] Listen to the audio record of the General Division recording at timestamp, 1:01:20.

[31] The Claimant acknowledged having received the disclosure including the documents from the employer, and that he had read it. This means that he was aware of the case he had to meet and had enough time to prepare.

[32] He also had the opportunity to be heard at his General Division hearing. It is clear from the file that the employer attributes the text to him. It should be obvious to the Claimant that the General Division may accept the evidence at face value if he does not dispute it.

[33] The General Division has no obligation to put each piece of evidence to the Claimant and ask whether he agrees or disagrees with it. Having said that, in this case, the General Division actually raised the text evidence specifically, read it out loud to the Claimant, and cautioned him that “the words matter.” The Claimant had every opportunity to deny it was his text. He did not do so.

Summary

[34] I have found that the General Division made one important error of fact by misstating the Claimant’s evidence that he did nothing to clarify that he had not resigned or meant to resign.

[35] This means that I must decide what to do to correct that error.

Remedy

[36] I can make the decision that the General Division should have made, or I can send the matter back to the General Division for reconsideration.[11] The Commission says that I have all the information that I need to make the decision, but argues that I should dismiss the appeal. It argues that the decision should be the same even if I correct for the error of fact. It says the General division made no other error.

[37] The Claimant agrees that I should make the decision but maintains that I should find that he did not quit his job. This is his main argument. However, he recognizes that

[11] See sections 59(1) and 64 of the DESDA.

I may find otherwise. In that event, he asks that I find that he had no reasonable alternative to leaving.

[38] I agree with both parties that I have all the information I need to make the decision. I will substitute my decision for that of the General Division.

My decision

– Voluntary leaving

[39] I find that the Claimant voluntarily left his job.

[40] The test for voluntary leaving is simple. Did the Claimant have a choice to go or to stay?[12]

[41] The Claimant does not dispute that he was trying to negotiate a salary increase and perhaps other concessions. He said that the employer had to give him what he wanted, or he would leave. The General Division accepted that this was a negotiating tactic and that it backfired when the employer accepted his resignation. It said that he initiated his separation by putting the ultimatum to the employer. The employer was unwilling to accept his terms, so it understood and accepted that he quit.

[42] When the Claimant texted the minimum he would accept from the employer, "or he was going back to running his business," he was giving the employer an ultimatum, regardless of whether the Claimant would call it an ultimatum.

[43] I agree with the General Division that the Claimant was using the July 9 ultimatum as a negotiating tactic. However, I do not think he was acting tactically on July 10 when he asked how much notice the employer wanted and indicated that he was resigning the next day. I accept the Claimant's testimony that he was frustrated by the employer's unwillingness to engage in salary negotiations. I accept that he said he was resigning to get the employer's attention.

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[12] See *Canada (Attorney General) v Peace*, 2004 FCA 56.

[44] At the same time, the evidence supports the General Division's conclusion that the employer understood his first text to be a threat to resign, and his follow-up text to be his resignation. I acknowledge that there is some ambiguity in the second text, in that the Claimant does not say his text is the resignation. The text says he will send his resignation email the next morning.

[45] However, the Claimant appears to have committed himself to resign. While he had made a threat to quit in his July 9 text, his July 10 text is not merely a threat. He does not say that he will send a resignation email under certain conditions, or that he will send it if the employer does not respond in a certain way. He asks how much notice the employer wants and states that he will send his resignation. I agree with what the General Division said in the hearing: This sounds like a resignation.

[46] In spite of that, I would not find him to have resigned if I accepted his evidence of what happened after he realized the employer was taking his resignation seriously. The Claimant's testified that he went to the CEO, and he implied that the CEO accepted that his resignation was a misunderstanding. He said the CEO was willing to keep him on, and that it was actively negotiating to satisfy his demands.

[47] However, I do not accept that all of this testimony is accurate.

[48] The employer's evidence is that the Claimant gave his two-weeks notice.[13] It also stated that it could not pay the Claimant what he wanted, that the Claimant initiated the separation with his texts, and that it had accepted his decision to go back to running his own business.[14] It said that it had not dismissed the Claimant.

[49] The Claimant initially told the Commission that he was fired. He said he had told his manager that he might need to give notice if his workspace demands were not met.[15] He later added that he had not quit but that his employer "kept recommending" that he look for other employment when he asked the employer to accommodate his

[13] See GD3-23.
[14] See GD3-49.
[15] See GD3-25.

circumstances. He said, “One day, without a notice, they terminated [his] employment.”[16]

[50] After he requested the Commission to reconsider its decision denying him benefits, he stated that he talked and texted with his employer about wanting a salary increase but was ignored. At this point, he agreed that he was not “terminated” but he again said his employer suggested he give his notice to quit if he was not satisfied.[17]

[51] None of the various statements to the Commission, from either the employer or the Claimant, mentioned that the employer or its CEO and the Claimant had any discussion about how the Claimant had not intended to resign. There is no indication from the employer that—at any time—it accepted that the Claimant had not really resigned. There is no evidence from the employer that it agreed that he could remain as an employee. Likewise, the Claimant did not tell the Commission that either of these things occurred.

[52] When the Commission received the text message evidence from the employer, it reviewed it with the Claimant and asked the Claimant to respond. He said only that he did not quit. But if the CEO had acknowledged that the Claimant had not actually resigned and if the employer had acted as though it expected the Claimant to continue in his employment, I would think that this would have been important context for the text messages, and highly relevant to the Commission’s decision that he voluntarily left. The Claimant did not mention it until his hearing before the General Division.

[53] After saying that he would go back to his own business unless the employer satisfied his demands, the Claimant sent a text on July 10 asking how much notice the employer wanted, and stating that he would send a resignation email the next morning.

[54] I find that the Claimant’s July 10 message, particularly as a follow-up to the July 9 ultimatum, constituted his resignation. I accept that he could have continued

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[16] See GD3-39.
[17] See GD3-47.

working even though his salary demands were unmet, but that he made a conscious choice to commit himself to resigning. He voluntarily left his employment.

[55] The employer accepted the Claimant's resignation on July 15, 2024, at the latest, when the Claimant's manager said, "I accept your two-weeks' notice." I do not accept that the Claimant retracted his resignation before July 15, 2024.

[56] I give little weight to the Claimant's testimony about conversations with the CEO or with his manager after his manager had already accepted his resignation. For the reasons I gave earlier, it is implausible that the Claimant would have omitted to mention any of this until his General Division appeal.

[57] It is possible that, after the employer accepted the Claimant's resignation, it contemplated **rehiring** the Claimant at an hourly rate as a field supervisor. However, I do not think it is likely that it changed its view that the Claimant's text was a resignation or that it reversed its decision to accept his resignation. The Claimant seems to have been surprised when the employer accepted his resignation, but the employer accepted his resignation, nonetheless.

[58] Even it the Claimant had retracted his resignation unconditionally, the employer was under no obligation to take the Claimant back after it accepted his resignation. I understand that the Claimant had second thoughts about sending the July 10 text. He may have tried to take it back or explain it away. However, the fact remains that he did send the text, that the text informed the employer he was resigning, and that the employer accepted this as his resignation.

[59] Decisions of the Umpire are not binding on me, but they may be persuasive.[18] There are decisions of the Umpire in which the Umpire found the claimant to have resigned after their resignation was both tendered and accepted.[19] Other Umpire decisions have found the claimant to have resigned even though they sought to retract

[18] The "Umpire" was the highest level of appeal for EI matters, under a previous administrative appeal scheme.
[19] See Canadian Umpire Benefit (CUB) decisions 74406 and 26595.

their resignation after it was accepted.[20] There is even one decision in which the resignation was considered effective when the employer did not explicitly accept it, but did not refuse it.[21]

[60] I agree that the Claimant cannot "take back" his resignation once the employer has accepted it.

[61] The Commission has established that it is more likely than not that the Claimant voluntarily left his employment.

– **Just cause for leaving**

[62] The General Division also found that the Claimant did not have just cause for leaving. The Commission argued that the General Division made no error in how it evaluated just cause.

[63] I agree that the General Division did not make an error in how it found that the Claimant left his employment without "just cause."

[64] It did not make an error of law. The General Division considered his circumstances, and evaluated whether he had reasonable alternatives to leaving, as the law requires. And it found that he did not have just cause because he had reasonable alternatives.[22]

[65] It did not make an error of fact. The Claimant argued that he would have had just cause because of his concerns that his employer was not operating in a safe manner, and because the employer ignored his concerns. He argued that he could ultimately be held liable for those safety breaches. However, the Claimant did not point to any evidence that the General Division overlooked or misunderstood about his circumstances or about his reasonable alternatives to leaving.

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[20] See CUB 25359A, CUB 50894, and arguably CUB 69208.
[21] See CUB 22680.
[22] See section 29(c) of the *Employment Insurance Act*.

[66] I note that the General Division considered the Claimant's safety concern. It found that reporting his safety concern would not be a reasonable alternative, because it accepted that the Claimant would have been reporting himself. However, it found that the Claimant's safety concern was about a "one-off situation" and that the employer had properly dealt with it. It did not accept that his safety concern amounted to reasonable grounds for leaving his employment.

[67] The General Division also considered whether there had been a significant change in his work duties. It found that there had not been any significant or permanent changes.

[68] One of the reasonable alternatives identified by the General Division was that the Claimant could have found a new job before quitting. Since the Claimant's safety issue was a one-off that the employer remedied, his safety concern would not have made it unreasonable for him to continue working while he looked for another job.

[69] The Claimant's main issue, and his main reason for offering to resign, was his dissatisfaction with his salary. According to the Federal Court of Appeal in *Canada (Attorney General) v Tremblay*, it is not just cause for a claimant to leave their employment because it does not offer an adequate salary.[23] The General Division did not need to take the Claimant's dissatisfaction with his salary into account.

[70] Finally, the Claimant's evidence was that he did not mean to quit, and that he tried to negotiate terms on which he could stay or return to work. Such evidence is incompatible with the contention that he had no reasonable alternative but to leave.

[71] Since the General Division made no error, I adopt its reasons and find that the Claimant had not shown on a balance of probabilities that he had reasonable alternatives to leaving. That means he quit without just cause.

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

Conclusion

[72] I am dismissing the appeal. I have found that the General Division made an important error of fact. However, I have corrected for that error, and I must still find that the Claimant voluntarily left his employment without just cause. For this reason, he is disqualified from receiving benefits.

Stephen Bergen
Member, Appeal Division