Citation: *Canada Employment Insurance Commission v GD*, 2025 SST 420

Social Security Tribunal of Canada
Appeal Division

Decision

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

Decision under appeal:	General Division decision dated December 23, 2024 (GE-24-3636)

Tribunal member:	Elizabeth Usprich
Type of hearing:	Teleconference
Hearing date:	March 12, 2025
Hearing participants:	Appellant's representative Respondent
Decision date:	April 24, 2025
File number:	AD-25-21

Decision

[1] The appeal is dismissed.

[2] The General Division made an error of law. I have given the decision the General Division should have given. But the outcome remains the same.

Overview

[3] G. D. is the Claimant. He applied for Employment Insurance (EI) benefits when he went on a leave of absence from his employer in February 2024.

[4] Originally the Claimant received EI payments in February 2024. The Canada Employment Insurance Commission (Commission) then re-examined the claim. It decided the Claimant shouldn't have received benefits because he voluntarily left his employment without just cause in February 2024.

[5] The Claimant asked the Commission to reconsider. It didn't change its mind. So, the Claimant appealed to the Social Security Tribunal (Tribunal) General Division.

[6] The General Division allowed the appeal. It decided the Claimant was on an indefinite leave of absence in February 2024. It decided the Commission didn't prove the Claimant had voluntarily left his employment at that time. So, the Claimant wasn't disqualified from receiving EI benefits for that reason.

[7] The Commission has appealed to the Tribunal's Appeal Division. The Commission argues the General Division made errors of law.

[8] The General Division made an error of law. I have given the decision the General Division should have given. The General Division didn't apply settled case law that allows it to decide if there was an end to the employment relationship, and, if so, when.

[9] The Claimant went on a leave of absence, but later, the employment relationship was severed by the employer. The Claimant isn't disqualified from receiving benefits for this reason.

Issues

[10] The issues in this appeal are:

a) Did the General Division make an error of law when it didn't apply binding case law about if the Claimant's employment was at an end, and if so, when?

b) If so, how should the error be fixed?

Analysis

[10] I can intervene (step in) only if the General Division made an error. There are only certain grounds of appeal that the Appeal Division can consider.[1] Briefly, the Claimant has to show the General Division did one of the following:

- It acted unfairly in some way.
- It decided an issue it shouldn't have, or didn't decide an issue it should have. This is also called an error of jurisdiction.
- It made an error of law.
- It based its decision on an important error of fact.

The General Division made an error of law because it didn't decide if the Claimant's employment had ended

[11] The question before the General Division was did the Claimant voluntarily leave his position with his employer. The Commission had disqualified the Claimant from the date he had last worked, February 8, 2024. The General Division then **only** considered if the Claimant's employment ended on that date.

[12] The General Division correctly stated the legal test for voluntary leaving.[2] If the Claimant had a choice to stay or leave his job, then he voluntarily left.[3] But the General

[1] See section 58(1) of the DESD Act. The grounds listed are also known as errors.
[2] See the General Division decision at paragraphs 14 and 15.
[3] *Canada (Attorney General)* v *Peace*, 2004 FCA 56.

Division first had to decide if there was a separation, or termination, in the employment relationship. If there was, it would then have to figure out on which date that occurred. In other words, the Tribunal isn't bound by the date the Commission chooses.[4]

– The law

[13] There is one section of the *Employment Insurance Act* (EI Act) that sets out two reasons why someone can be disqualified from receiving EI benefits: (1) voluntarily leaving a job without just cause and (2) being dismissed because of misconduct.[5] Sometimes it isn't clear if a person quit or voluntarily left work. The law says, in those situations, the Tribunal isn't bound by how the Commission decided it.[6] The disqualification can be based on either of the two reasons, as long as it's supported by the evidence.[7]

[14] So, the Tribunal can characterize the end of an employment relationship. If it decides the employment relationship ended, it can also decide whether someone was dismissed (or laid off) or if the person voluntarily left.

– The General Division had to decide if the employment had ended

[15] The General Division took a narrow approach and only analyzed whether the Claimant voluntarily left his job on February 8, 2024. Yet, the question that needed to be answered was whether the Claimant's employment was at an end.

[16] If the employment had ended, the General Division should have examined when it ended. Then the next question would be if the Claimant was disqualified under section 30 of the EI Act. This would have included an analysis about whether the Claimant had a choice to stay or go at his job.

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[4] In this case, the Commission decided the Claimant voluntarily left his job on February 8, 2024. But the question before the General Division wasn't ONLY whether the Claimant voluntarily leave his job on that date. The General Division should have decided first if the employment relationship had ended.
[5] Section 30 of the *Employment Insurance Act*.
[6] *Canada (Attorney General)* v *Desson*, 2004 FCA 303 at paragraph 4.
[7] *Canada (Attorney General)* v *Desson*, 2004 FCA 303 at paragraph 4. See also *Canada (Attorney General) v Borden*, 2004 FCA 176 at paragraph 6.

[17] The Claimant told the General Division that "everyone was laid off".[8] There was evidence before the General Division that the employment relationship had been severed.[9] The General Division should have decided if the employment relationship had ended. It didn't do an analysis about this. By **only** focussing on the February 8, 2024 date that the Commission had picked, the General Division didn't correctly apply the legal test it had identified.

Remedy

[18] Since I have found an error, there are two main ways I can remedy (fix) it. I can make the decision the General Division should have made. I can also send the case back to the General Division if the hearing wasn't fair or there isn't enough information to make a decision.[10]

[19] Both parties agreed they have no additional information to give. They said I should give the decision the General Division should have given. I agree.

– Agreed upon facts at the Appeal Division

[20] During the Appeal Division hearing, the parties agreed the Claimant went on a leave of absence from his employment after February 8, 2024. It is also agreed that the leave of absence didn't have a specified end date.[11] The parties also agreed that the employment relationship ended on May 9, 2024.[12] The Claimant agreed he was no longer working for the employer and he was no longer on a leave of absence.

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[8] Listen to the General Division hearing recording at 01:27:22.
[9] Specifically, that the employer had issued a Record of Employment (ROE) on May 9, 2024.
[10] Section 59(1) of the DESD Act allows me to fix the General Division's errors in this way.
[11] This distinction is important. Section 32 of the *Employment Insurance Act* (EI Act) says if there is a specified end date, among other criteria, that a disentitlement rather than a disqualification from benefits can occur. This section doesn't apply in this case because there was no specified end date to the leave of absence.
[12] The Claimant agreed during the Appeal Division hearing that he was no longer on a leave of absence. He also stated that he was no longer employed with his employer. When I asked him when the employment relationship changed, he said he thought it would have been on May 9, 2024, when the employer issued a Record of Employment (ROE).

There employment relationship was at an end

[21] It isn't disputed that the Claimant started an indeterminate leave of absence in February 2024. Yet, the relationship with his employer changed in May 2024. It changed because the employer issued a Record of Employment. This action severed the employer/employee relationship.

– The Claimant was on a leave of absence between February 9, 2024, until May 8, 2024

[22] The parties agree the Claimant was on a leave of absence, for personal reasons, starting February 9, 2024. The Claimant's employment was unusual. The Claimant resided in Nova Scotia and was part of a large project occurring in British Columbia. The Claimant estimated there were about 5,000 workers on this project. The employer would fly employees in for a 20-day rotation. Then the employees would have a seven-day break when they were flown home.

[23] Before his on-site rotation ended on February 8, 2024, the Claimant spoke to his general foreman.[13] The Claimant told the foreman that his dad had cancer and he had to return home to help facilitate the treatments his dad needed. The foreman told the Claimant to talk to the union steward and human resources if he couldn't return.[14]

[24] Later, the Claimant called the steward who contacted human resources with the Claimant on the line. The Claimant said he was told to take as much time as he needed.[15] The Claimant also said he told them he didn't know how long he would need to be off. So, the Claimant believed he was on an indeterminate leave of absence.

– The exception under section 30(1)(b) of the EI Act doesn't apply

[25] There is an exception to being disqualified under section 30(1)(b) of the EI Act that says, "the claimant is disentitled under sections 31 to 33 in relation to employment."

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[13] Listen to the General Division hearing recording at 00:33:43.
[14] Listen to the General Division hearing recording at 00:34:44.
[15] Listen to the General Division hearing recording at 00:37:35.

If someone were on a leave of absence without just cause, it could fall under section 32 of the EI Act, and the person wouldn't be disqualified.

[26] The Commission conceded that the section 32 provision doesn't apply in this situation.[16] This is because the Claimant was on a leave of absence that doesn't fall under section 32 of the EI Act.

The Claimant didn't voluntarily leave his employment on May 9, 2024

[27] For the reasons that follow, I find it was the employer who initiated the end of employment on May 9, 2024. I have to decide if the Claimant had the choice to stay or go.[17] In this case, I find the Claimant didn't have the choice. His employer made the decision to sever the employment relationship.

– The employment relationship ended when his employer issued a Record of Employment

[28] On May 9, 2024, the Claimant's employer issued a ROE.[18] The reason the ROE was issued is listed as "quit". There are no comments listed about why the ROE was issued at that time.

[29] The Commission contacted the employer about the ROE.[19] The employer said because they hadn't heard from the Claimant they considered the job abandoned. That was the explanation they gave the Commission about why they listed the reason for separation as a quit.

[30] The Claimant wrote his union about the employer issuing the ROE out of the blue.[20] The Claimant explained he didn't quit or abandon his job. He believed the employer would contact him before taking such drastic action. The Claimant emailed the

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[16] See AD6-5 the Commission's Representations to the Appeal Division.
[17] See Canada (Attorney General) v Peace, 2004 FCA 56 at paragraph 15.
[18] See GD3-14 the ROE in the Commission's Reconsideration File. This was the first ROE issued by the employer.
[19] See GD3-24 notes of the Commission's call to the employer in the Commission's Reconsideration File.
[20] See GD2-8 the Claimant's Notice of Appeal to the General Division which includes a copy of the email sent to the union representative.

union representative on October 29, 2024. Two days later the employer issued a new ROE.[21] The new ROE indicates the Claimant was laid off due to a shortage of work.

[31] The Commission argues that the second ROE isn't as credible. The Commission says there are many reasons that employers change an ROE. Sometimes an employer changes an ROE due to civil actions. I agree. But I am not convinced that this is the case here. There is no suggestion that there is any type of civil action. The only reason the employer seems to have so quickly changed the ROE was because the Claimant wrote to his union.

[32] The Claimant had no work performance issues noted. The Claimant seemed to be a respected employee. The employer agreed to an indeterminate leave of absence due to the Claimant's father having cancer treatments. There was no suggestion that there were any incidents at work. All the evidence before me suggests the Claimant had a good working relationship with his employer.

[33] The employer never testified before the General Division, so there is no firsthand account about their view on this matter. Instead, there are only the Commission's notes based on one phone call.

[34] I accept the Claimant's uncontested testimony that there were thousands of employees working on this project. I find it more likely than not that the employer may have made an error when filling out the ROE. It is possible, due to the large numbers of employees, that the person filling out the ROE didn't understand the situation. There was no clear communication from the employer to the Claimant that he had to check in with them every so often. The Claimant testified he didn't know the employer expected him to reach out. He also stated that he believed the employer would reach out to him.[22]

[35] Once the Claimant asked the employer, through his union, to change the reason for separation, it was immediately done. The employer didn't have to do so. Since there is no testimony from the employer about this, there is no way to know their reason.

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[21] See GD3-36 new ROE issued October 31, 2024, in the Commission's Reconsideration File.
[22] Listen to the General Division hearing recording at 00:59:25.

[36] The ROE change of reasons still needs to be analyzed. I find the Claimant's testimony compelling. He testified he believed the employer would contact him about a return to work. He wasn't aware of any policy stating he had to contact them. He was also aware that work was becoming slow and layoffs were anticipated. The Claimant has consistently said he never quit his job.[23] I accept the Claimant didn't quit. So, I don't accept the reason for separation listed on the first ROE.

[37] I prefer the reason for separation on the second ROE. The Claimant testified about his indeterminate leave of absence and that co-workers were getting laid off in May 2024. The contemporaneous nature of other employees being laid off and the employer issuing the ROE for the Claimant is compelling. It is entirely possible that the first ROE was filled out by someone who wasn't aware of the whole situation. I accept that the Claimant's union representative reaching out was the reason the ROE was corrected.

– **Failure to contact his employer did not result in job abandonment**

[38] I also don't find the Claimant abandoned his job. The Claimant believed his employer would reach out about returning. The Claimant didn't refuse to return to work.[24] The Claimant believed he was on an indeterminate leave of absence.

[39] I accept the Claimant's testimony that his dad's cancer treatments hadn't finished.[25] Rather, his dad would have some treatments then have a break when he was assessed to see if the treatment was working. So, the treatment type changed but his dad still had cancer that was actively being treated.

[40] The Commission noted the Claimant said he didn't contact his employer when his dad's five to six treatments ended because he was then dealing with relationship issues.[26]

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[23] See GD3-32 of the Commission's call to the Claimant in the Commission's Reconsideration File. See also GD2-5 the Claimant's appeal to the General Division. Listen to the General Division hearing recording at 01:17:15 and 01:21:39.
[24] This means section 29(b.1)(ii) of the EI Act doesn't apply.
[25] Listen to the General Division hearing recording at 01:00:55.
[26] See GD3-33 notes of the Commission's call to the Claimant in the Commission's Reconsideration File.

[41] The Claimant's testimony to the General Division was different. The Claimant testified that after his dad's current course of treatment ended, he then had to go to Florida to deal with an issue.[27] The Claimant was in Florida for approximately two months. Following that, he said he had additional issues with his family doctor retiring, being unable to get prescriptions, and getting his Class 2 driver's licence renewed.[28]

[42] The Claimant admits, in hindsight, he should have attempted to stay in contact with his employer. That could have mitigated any confusion between the Claimant and his employer. It is important to understand that this employer/employee relationship was unusual. Due to the scope of the project, the Claimant said there were thousands of employees. There wasn't a personal relationship between the Claimant and the employer.

[43] The Claimant testified to the General Division that he believed his employer would contact him to make a decision about returning to work. The reason he thought the employer would contact him is because other employees, still at the site, were telling him that work was slow and layoffs were expected. He told the General Division that those employees were laid off in May 2024.[29] That coincides with when his employer issued the ROE for the Claimant.

[44] I find, based on the evidence, that in May 2024 the employer laid off the Claimant. The Claimant went from being on an indeterminate leave of absence to having the employment relationship severed.

[45] So, the Claimant did not voluntarily leave his employment nor did he abandon his job. The Claimant was on an indeterminate leave of absence. This changed when the employer issued a ROE in May 2024, that severed the relationship. The Claimant isn't disqualified from receiving EI benefits for this reason.

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[27] Listen to the General Division hearing recording at 00:43:01.
[28] Listen to the General Division hearing recording at 01:03:15 to 01:10:00, and 01:19:45.
[29] Listen to the General Division hearing recording at 01:18:46.

Conclusion

[46] The appeal is dismissed.

[47] The General Division made an error of law. I have given the decision the General Division should have given. But the outcome remains the same.

Elizabeth Usprich
Member, Appeal Division