Citation: *Canada Employment Insurance Commission v PS*, 2025 SST 407

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Jessica Murdoch
Respondent:	P. S.

Decision under appeal:	General Division decision dated January 20, 2025 (GE-24-4067)

Tribunal member:	Stephen Bergen
Type of hearing:	Teleconference
Hearing date:	April 8, 2025
Hearing participants:	Appellant Respondent's representative
Decision date:	April 23, 2025
File number:	AD-25-92

Decision

[1] I am dismissing the appeal.

Overview

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

[3] The Claimant was upset that her employer was changing her position, the nature of her job duties, and requiring her to accept a transfer. She sent the employer an email in which she identified her concerns. She indicated that the terms proposed by the employer were unacceptable and she proposed other terms that would partially offset her concerns. The employer responded by saying it was accepting her resignation and that she was terminated immediately. When she insisted that she had not meant to resign, the employer would not take her back.

[4] The Claimant applied for EI benefits, but the Commission denied her claim. It said that she voluntarily left her employment without just cause. The Claimant asked the Commission to reconsider but it would not change its decision.

[5] The Claimant appealed to the General Division of the Social Security Tribunal, which allowed her appeal. It decided that she did not leave her job voluntarily. The Commission responded by appealing the General Division decision to the Appeal Division.

[6] I am dismissing the appeal. The Commission has not satisfied me that the General Division made an error.

Issues

[7] The issues in this appeal are

a) Did the General Division make an error of fact by finding that the Claimant was not given an option to stay in her job while

- ignoring evidence that the Claimant thought she could have stayed in her employment?
- ignoring evidence that the Claimant understood she might be dismissed as a result of her email?

b) Did the General Division make an error of law by

- following inapplicable case law?
- failing to evaluate whether the Claimant had "just cause"?
- failing to evaluate whether the Claimant was dismissed for misconduct?

Analysis

[8] 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]

[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).

Did the General Division make an error of fact when it found that the Claimant was not given an option to stay in her job?

– Evidence that the Claimant was not certain she did not have the option of staying

[9] The Commission argues that the General Division ignored the Claimant's testimony. When asked if she had the option to remain in her job, the Claimant responded "maybe." The Commission says this is evidence that she had the option to stay.

[10] The General Division member asked the Claimant if she had an option to stay on as an employee if she agreed to the employer's terms. The Commission is correct that the Claimant responded "maybe."

[11] However, "maybe" there was an option to stay is not the same thing as "yes," there was an option to stay. The Claimant stated that she was offering what she described as her "personal view" about the possibility that she could stay.[2] Her personal view says nothing about whether the option objectively existed. The Claimant qualified her statement by adding that the employer had not given her the option of staying.[3]

[12] The General Division's discussion of how "the employer didn't give her the option to stay," immediately follows its discussion of how she had not intended to quit when she sent the August 7 email. In my view, its finding that the employer had not given her the option to stay is a finding that the employer did not give her the option once it received her email.

[13] This is consistent with the email evidence. The employer responded to her initial email within about three hours to say that it sounded like she was resigning and that it

[2] Listen to the audio recording of the General Division hearing at timestamp, 00:45:18.
[3] Listen to the audio recording of the General Division hearing at timestamp, 00:45:12.

was letting her go "effective immediately."[4] The Claimant answered the employer's email minutes later to clarify that she had not meant to resign.[5]

[14] The General Division did not make an error of fact by ignoring or misunderstanding this evidence.

– **Evidence that the Claimant understood she might be dismissed**

[15] The Commission also argues that the General Division ignored the part of the Claimant's August 7 email in which she said she would understand if the employer wanted to send her on her way for declining its proposed changes. According to the Commission, this was evidence that the Claimant initiated the termination of her employment by declining the changes.

[16] The General Division did not make an error by ignoring the Claimant's evidence that she knew she might be dismissed.

[17] I recognize that the General Division did not factor the Claimant's understanding into its analysis. However, the General Division was clearly aware of the evidence and understood it. Its decision notes specifically how the Claimant wrote that she "understood if the employer chose to terminate her employment as a result of her refusal to move to the new location."[6]

[18] The General Division decision based its decision on findings that dismissal was not the only logical consequence of the Claimant's email, that she had intended the email only to prompt the employer to respond to her concerns, and that she had not intended to quit or provoke the employer to dismiss her. The fact that the Claimant appreciated that the employer might be unwilling to negotiate is not so important to the decision that the General Division should have brought it into its analysis explicitly. I may presume that the General Division understood and considered this evidence [7]

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[4] I am comparing the time and date on each email. See GD3-55 (August 7, at 5:13 p.m.) and GD3-62 (August 7 at 8:20 p.m.).
[5] See GD3-63. (email sent at August 7 at 8:38 p.m.)
[6] See General Division decision at paras 21 and 23.
[7] See *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

Did the General Division make an error of law by relying on inapplicable case law when it found that the Claimant had not reduced her availability?

[19] The General Division did not make an error of law by citing and distinguishing *Canada (Attorney General) v Coté*.[8]

[20] It cited *Coté* for the principle that a claimant who advises their employer that they are less available than they were previously, is still "voluntarily leaving," because they are essentially asking to be terminated. The General Division said that the principle in *Coté* did not apply in these circumstances, because the Claimant did not advise her employer that she was less available. The Commission argues that the real issue is that the Claimant refused to comply with a direction of the employer, not that she reduced her availability.

[21] The Commission is **not** saying that *Coté* stands for a legal principle that the General Division was bound to follow, or that it ought to have applied *Coté.* The Commission's appeal does not challenge the General Division's finding that the Claimant did not advise the employer she was less available. It has not suggested that the Claimant's refusal to comply with a direction of her employer is analogous to the situation where a claimant reduces their availability, such that the General Division ought to have applied the principle in *Coté.*

[22] Since the Commission has not made these arguments, I have not considered them.

[23] Instead, the Commission argues that it was a mistake for the General Division to have cited *Coté* and to have used the "logic of the decision," to explain its decision that the Claimant was dismissed.

[24] I disagree. The General Division did not cite *Coté* because the decision, or its logic, supported the Claimant's argument that she voluntarily left her employment. It was tasked with deciding whether the Claimant voluntarily left her employment. It

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[8] See *Canada (Attorney General) v* Coté, 2006 FCA 219.

considered the *Coté* decision only because it represented a potential challenge to the Claimant's insistence that she did not voluntarily leave her employment.

[25] This was an entirely appropriate application of the *Coté* decision.

Did the General Division make an error of law by failing to evaluate whether the Claimant had just cause for leaving

[26] The General Division did not make an error of law by omitting to evaluate whether the Claimant had just cause.

[27] Once the General Division found that the Claimant did not voluntarily leave, it made little sense for it to analyze whether the Claimant would have had just cause in the event that she had voluntarily left.

[28] A finding that the Claimant did not voluntarily leave is a finding that she had no choice to stay.[9] She could not have no choice **but to** leave and, at the same time, have reasonable alternatives to leaving.

Did the General Division make an error of law by failing to evaluate whether the Claimant's conduct was due to misconduct?

[29] The Commission argued that the General Division made an error of law by failing to consider whether the Claimant was dismissed for misconduct.

[30] The Commission originally disqualified the Claimant on the basis that she voluntarily left her employment without just cause. Even so, the General Division had the jurisdiction to consider whether the Claimant should be disqualified for having been dismissed for misconduct.

[31] In the Federal Court of Appeal decision, *Canada (Attorney General) v Easson,* the Commission originally disqualified a claimant because the employer had dismissed

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

him for misconduct. [10]The question in *Easson* was the breadth of the appeal body's jurisdiction.

[32] The Court in *Easson* noted that "misconduct" and "voluntary leaving" are distinct abstract notions, but that, "both refer to a situation where the loss of employment is the result of the deliberate action or actions on the part of the employee—and both are sanctioned similarly by special disqualification." It confirmed that the Board of Referees could interpret the facts to fit one or the other disqualification, "without straying from the subject matter it was called upon to consider."[11]

[33] In other words, the Court accepted that it was within the jurisdiction of the first - level appeal body to find the claimant should be disqualified for having voluntarily left his job without just cause, despite the fact that the Commission decision had disqualified the claimant for misconduct.

[34] However, the fact that the General Division's jurisdiction permits it to consider both kinds of disqualifications does not mean that it made an error of law or jurisdiction by not doing so.

[35] *Canada (Attorney General) v Eppel* is another decision of the Federal Court of Appeal.[12] It considered *Easson,* and other similar decisions, and concluded that the Board of Referees did **not have a duty** to inquire into the possibility that either of the two kinds of disqualification could apply. Its duty was to confirm the disqualification regardless of how the Commission had characterized it, providing that it was satisfied on the facts that the claimant lost her job for either reason. *Eppel* added that the Board of Referees is not an inquisitorial tribunal and does not need to do any search or investigation in order to satisfy itself on the facts.

[36] In the *Eppel* decision*,* the Court found it significant that the Commission had made "no allusion to any other possibility than a 'quitting without just cause'" in the

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[10] See *Canada (Attorney General) v Easson,* A-1598-92.
[11] The Board of Referees is analogous to the General Division. It was the first level of appeal under the former Employment Insurance administrative appeal scheme.
[12] See *Canada (Attorney General) v Eppel*, A-3-95.

appeal to the Board of Referees. *Eppel* also noted that there was little evidence of misconduct, beyond a letter following an incident of foul language. The Court stated that "much more would have been needed to establish to the tribunal's satisfaction that the claimant's actions were misconduct."

[37] The same is true on the facts of the present appeal. There was no mention or suggestion in the Commission's original decision or its reconsideration decision that the Claimant was dismissed for misconduct.

[38] In its submissions to the General Division, the Commission cited *Easson.* It noted what *Easson* said about how both misconduct and voluntarily leaving are sanctioned similarly because both involve deliberate actions by the employee. However, the Commission made no effort to relate *Easson* to the facts of the case, and it did not argue that the General Division should find the Claimant to have been terminated for misconduct if it decided that she did not voluntarily leave without cause.

[39] The only evidence of any actions which could be characterized as "misconduct" is the Claimant's email evidence that she was unwilling to accept the employer's new terms of employment. Had the evidence supported a conclusion that the employer dismissed her because she was refusing to work, refusing to follow appropriate directions, or because she was insubordinate, this could conceivably have been found to be misconduct.

[40] However, as in the facts of the *Eppe*l case, there was little evidence on which the General Division might have found actual misconduct.

[41] The Claimant testified that she was ambushed by the employer with the changes to her job duties, title, and work location. In the email that she wrote in response, the Claimant expressed her many concerns and went on to indicate the working conditions she would be willing to accept. Her "resignation from retail" was accompanied by a proposal to perform all of her other General Manager duties from home. If the employer wanted to terminate her instead, she offered to discuss it.

[42] The employer did not inform the Claimant that it was letting her go because she was refusing the transfer, or refusing to work, or being less available for work, or for abandoning her position. It did not say it had to let her go because she was refusing to follow directions or being insubordinate.

[43] Instead, the employer responded to the Claimant's email by saying that it sounded like a resignation letter. It added that it appreciated her offer to "stick around" but thought it best to let her go immediately. She replied within minutes to say that she had not meant to resign, but there was no change in the employer's position.

[44] The Claimant testified that she loved her job, and did not want to leave. She said she was shocked by the employer's response. She said that she had never intended to leave and had hoped the employer would agree to a conversation after she sent the email.

[45] The General Division accepted that the Claimant was not trying to quit or provoke the employer to fire her. It found as fact that she was only trying to engage the employer in conversation so that she could discuss her concerns. It found that she was neither resigning nor inviting the employer to dismiss her. From this, it would seem that the General Division accepted that the Claimant was trying to negotiate with the employer on the changes to her employment—rather than refuse them outright.

[46] It is not the place of the Appeal Division to reevaluate or reweigh the evidence. The General Division's findings follow rationally from the evidence, and it is not apparent that the General Division ignored or misunderstood evidence that was relevant to its finding.[13]

[47] Given those findings, and the fact that the Commission had never taken a position that the Claimant may have been dismissed for misconduct, the General Division had no reason to consider whether the Claimant should be disqualified for misconduct.

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[13] See, for example: *Tracey v Canada (Attorney General),* 2015 FC 1300; *Hideq v Canada (Attorney General)*, 2017 FC 439.

[48] It was not an error of law or jurisdiction that it did not do so.

Conclusion

[49] I am dismissing the appeal. The Commission has not established that the General Division made an error in deciding that the Claimant did not voluntarily leave her employment.

Stephen Bergen
Member, Appeal Division