



Citation: *SR v Canada Employment Insurance Commission*, 2025 SST 576

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** S. R.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Adam Forsyth

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**Decision under appeal:** General Division decision dated January 17, 2024  
(GE-23-3340)

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**Tribunal member:** Elizabeth Usprich

**Type of hearing:** In Writing

**Decision date:** May 30, 2025

**File number:** AD-24-141

## Decision

[1] The appeal is allowed.

[2] The General Division made an important error of fact. Further, it didn't ask the Claimant about all her reasonable alternatives. So, the case must go back to the General Division for reconsideration.

## Overview

[3] S. R. is the Claimant. She applied for Employment Insurance (EI) benefits in July 2023.

[4] The Claimant was employed and left Canada to receive treatment for a medical issue in her home country. The Claimant says her return to Canada was delayed due to an unforeseen medical issue. The Claimant's employer decided the employment relationship ended because she didn't return to her job on the agreed upon date.

[5] The Canada Employment Insurance Commission (Commission) decided the Claimant voluntarily left her employment. It says the Claimant's unilateral decision to not return to her job on the agreed upon date means she initiated leaving the employment.

[6] The Claimant appealed to the Social Security Tribunal (Tribunal) General Division. The General Division agreed with the Commission. It decided the Claimant's issue wasn't unforeseen.

[7] The Claimant appealed to the Tribunal's Appeal Division. The parties agree the General Division made an error. I am sending this back to the General Division for reconsideration.

## **The parties agree on the outcome of the appeal**

[8] The General Division made an error of fact. The General Division decided the Claimant knew her treatment would extend beyond June 27<sup>th</sup>.<sup>1</sup> The Claimant's position is that she has been misunderstood.<sup>2</sup>

[9] The General Division misunderstood the evidence before it.<sup>3</sup> The General Division says the Claimant was inconsistent with her testimony. But the General Division didn't appreciate that the Claimant's employer changed its remote work policy. This changed the amount of time the Claimant was approved to be away.<sup>4</sup>

## **I accept the proposed outcome**

[10] An error of fact happens when the General Division makes its decision based on an erroneous (wrong) finding of fact that was "made in a perverse or capricious manner or without regard for the material before it".<sup>5</sup> This means the General Division had to ignore, misunderstand or overlook the evidence in some way.

[11] The General Division decided the Claimant quit her job. If someone quits their job, it doesn't necessarily mean they can't get EI benefits. The person would have to show they had "just cause" for leaving the job.<sup>6</sup> Just cause is shown by looking at all the circumstances and deciding if the person didn't have a reasonable alternative other than to quit.

[12] So, there are two parts of the legal test. First, all the circumstances that existed when a person quit must be considered. Second, it must be decided if the person had no reasonable alternative other than to quit.

[13] The General Division decided the Claimant quit because she was away from her job for six weeks when she was only approved for an absence of four weeks.<sup>7</sup> Yet, the

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<sup>1</sup> See the General Division decision at paragraphs 27 and 50.

<sup>2</sup> See AD1-25 the Claimant's Application to the Appeal Division.

<sup>3</sup> See the General Division decision at paragraph 27.

<sup>4</sup> See AD1-24 the Claimant's Application to the Appeal Division.

<sup>5</sup> See section 58(1)(c) of the DESD Act.

<sup>6</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at paragraph 3.

<sup>7</sup> See the General Division decision at paragraphs 11 and 12.

General Division didn't appreciate that the Claimant's testimony and evidence has consistently been that originally, she was approved for six weeks. Further, the Claimant said she agreed to return to her job in four weeks, but she had unforeseen medical complications that rendered her unfit to travel.

[14] The General Division decided that the Claimant's medical complications weren't unforeseen.<sup>8</sup> The General Division said because the medical complications weren't unforeseen, it meant the Claimant voluntarily left her job without just cause when she didn't return to her job on June 27, 2023.<sup>9</sup>

[15] The General Division didn't explain the impact of the doctor's medical note that the Claimant provided.<sup>10</sup> The Claimant says she was medically unfit to travel back to Canada to resume work on the date her employer wanted.<sup>11</sup> The General Division misunderstood that the Claimant's medical condition changed while she was out of Canada.

[16] The General Division decided the Claimant could have returned to work, instead of unilaterally extending her absence from work.<sup>12</sup> Yet, the Claimant testified about this.<sup>13</sup> The Claimant explained she didn't unilaterally change when she could return. Her doctor told her she was unfit for travel, due to unforeseen complications.

[17] The General Division found as fact that the Claimant made no attempt to change her travel plans after her employer told her to return to work by June 27, 2023. The Claimant had provided assurances to her employer that she would return to work by June 27, 2023.<sup>14</sup> But the General Division didn't ask the Claimant if she had attempted to modify her July 13, 2023, flight return date.<sup>15</sup> Without this information the Claimant's

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<sup>8</sup> See the General Division decision at paragraphs 34 and 50.

<sup>9</sup> See the General Division decision at paragraph 36.

<sup>10</sup> See GD3-55 of the Commission's Reconsideration File, the Doctor's note from June 23, 2023.

<sup>11</sup> See GD3-49 of the Commission's Reconsideration File. Listen to the General Division hearing recording at 00:35:25. See AD1-24 of the Claimant's Application to the Appeal Division.

<sup>12</sup> See the General Division decision at paragraph 44.

<sup>13</sup> Listen to the General Division hearing recording at 01:50:53.

<sup>14</sup> Listen to the General Division hearing recording at 00:52:01.

<sup>15</sup> Again, the Claimant testified that she was originally approved to be out of Canada for six weeks. The General Division asked the Claimant why she bought the airline tickets for a six-week absence. Listen to the General Division hearing recording at 00:53:07 and 01:09:15. The Claimant explained she bought the

medical condition and her claim that her circumstances were unforeseen could not be adequately evaluated.

[18] The parties agree that because the General Division didn't ask about this, the Claimant's reasonable alternatives weren't adequately explored. I agree. Because the Claimant's reasonable alternatives weren't explored, the case needs to return to the General Division for a new hearing.

## **Conclusion**

[19] The appeal is allowed.

[20] The General Division made an important error of fact. Further, it didn't ask the Claimant about all her reasonable alternatives. So, the case must go back to the General Division for reconsideration.

Elizabeth Usprich  
Member, Appeal Division

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tickets when she was first approved for six weeks. The General Division never asked if she made any changes to her flight times.