



Citation: *GA v Canada Employment Insurance Commission*, 2026 SST 185

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** G. A.  
**Representative:** John Gentile  
**Representative:** Sharon Crowe

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Lydia Tawil

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**Decision under appeal:** General Division decision dated September 24, 2025  
(GE-25-2240)

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**Tribunal member:** Solange Losier

**Type of hearing:** Videoconference  
**Hearing date:** February 17, 2026  
**Hearing participants:** Appellant  
Appellant's representatives  
Respondent's representative

**Decision date:** March 10, 2026  
**File number:** AD-25-674

## Decision

[1] G. A.'s appeal is allowed. The General Division made legal and important factual errors. There was also a reasonable apprehension of bias. The file will return to the General Division for reconsideration by a different member.

## Overview

[2] G. A. is the Claimant. He applied for Employment Insurance regular benefits. The Canada Employment Insurance Commission (Commission) decided that the Claimant was disqualified from getting benefits because it found that he voluntarily left his job without just cause.<sup>1</sup>

[3] The General Division accepted the Claimant had voluntarily left his job on November 28, 2024.<sup>2</sup> It found that he didn't have just cause and a reasonable alternative would have been to ask his lawyer to contact his employer to report his absence from work.<sup>3</sup>

[4] The Claimant argues that the General Division made several errors. I have found the General Division made reviewable errors, so I am returning the file to the General Division for reconsideration.

## Preliminary matters

### **The Claimant asked for an interpreter, but only wanted the interpretation for part of the Appeal Division hearing**

[5] The Claimant asked the Tribunal to arrange for an interpreter to attend the proceedings. The Tribunal scheduled an interpreter to attend the two-hour hearing.<sup>4</sup>

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<sup>1</sup> See Commission's initial and reconsideration decision at pages GD3-33 to GD3-34 and GD3-41.

<sup>2</sup> See paragraph 9 of the General Division decision.

<sup>3</sup> See paragraphs 28 and 30–31 of the General Division decision.

<sup>4</sup> This hearing was supposed to be heard on January 16, 2026, but due to technical issues it could not proceed. Please note there are two audio recordings for this file, one for January 16, 2026, and one for February 17, 2026. See pages AD0A-1 to AD0A-3 and AD0B-1 to AD0B-3.

[6] At the beginning of the Appeal Division hearing, one of the Claimant's legal representatives indicated that only part of the proceedings needed interpretation in the interests of "saving time." Specifically, his representative noted that only the Commission's oral arguments needed to be interpreted because the Claimant was already familiar with their own legal arguments.

[7] The *Social Security Tribunal Rules of Procedure* (SST Rules) say that the appeal process has to be simple, quick and fair.<sup>5</sup>

[8] Typically, when an interpreter is booked, the entire proceedings are interpreted fully and completely. In some cases, proceedings that are only partially interpreted could result in a process that isn't fair to a party or parties.

[9] With the assistance of the interpreter, I asked the Claimant directly what his preference was—did he want the entire proceedings interpreted including the oral arguments made by his representatives? Or did he only want the Commission's oral arguments interpreted as his representatives have suggested?

[10] The Claimant told me that he only wanted the Commission's arguments to be interpreted for him. I asked the Commission about this, and it didn't object to proceeding in this manner either.

[11] I allowed the Claimant's request for partial interpretation of the proceedings. I considered that it was the process he wanted to follow and there was no objection. I also considered that he was represented by two legal representatives who indicated that he knew and understood the arguments that would be made on his behalf.

[12] It's important to know that I gave no consideration that partial interpretation would "save time" because this hearing was booked to allow sufficient time for full and complete interpretation of the proceedings.

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<sup>5</sup> See section 8(1) of the *Social Security Tribunal Rules of Procedure* (SST Rules).

[13] The interpreter remained available for the Claimant throughout the entire proceedings. And I told the Claimant that if he changed his mind, at any point, the proceedings could be fully interpreted, but he made no such request.

[14] I am satisfied that the process followed by the Appeal Division in this case was simple, quick and fair to the Claimant and Commission.

**I had some questions for the parties and gave them time after the hearing to respond in writing**

[15] During the hearing, I had some questions for the parties, but they needed a bit more time to respond to them. So, I gave them time after the hearing to provide post-hearing written arguments.<sup>6</sup>

[16] For the Commission, I wanted further submissions about the misconduct issue. The reason is because the Commission's written arguments to the Appeal Division and General Division also refer to misconduct.<sup>7</sup> I wanted to know if misconduct was an issue the General Division should have dealt with. Sometimes the facts aren't clear whether its voluntary leave or misconduct. And there's case law about this.<sup>8</sup>

[17] For the Claimant, he maintained that the Commission hadn't proven he voluntarily left his job. So, I asked for submissions about this (often referred to as "in the alternative"). I explained that if I found an error made by the General Division and substituted with my own decision, then I would have to consider whether he voluntarily left his job. If so, I would then consider if he had just cause to do so. There is a provision in the *Employment Insurance Act* (EI Act) that provides a list of circumstances to consider.<sup>9</sup>

[18] The parties agreed to respond in writing by February 19, 2026, and did so. Their written responses were shared with each other, and they also got an opportunity to

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<sup>6</sup> See pages AD12-1 to AD12-3.

<sup>7</sup> See pages GD4-4 to GD4-5 and AD3-6.

<sup>8</sup> See *Canada (Attorney General) v Easson*, A-1598-92, *Canada (Attorney General) v Desson*, 2004 FCA 303 and *Canada (Attorney General) v Borden*, 2004 FCA 176.

<sup>9</sup> See section 29(c) of the *Employment Insurance Act* (EI Act).

reply to each other's arguments by February 27, 2026.<sup>10</sup> I have considered their responses in making my decision.

## Issues

[19] I have focused on the following issues:

- a) Did the General Division make legal and/or important factual errors when it "accepted" that the Claimant voluntarily left his job without dealing with his arguments about "voluntariness"?
- b) Did the General Division make any legal and/or important factual errors when it relied on presumptions in its decision? In doing so, did its rationale amount to a reasonable apprehension of bias and breach of natural justice?

## Analysis

[20] A legal error happens when the General Division misinterprets a law, doesn't apply the correct law or doesn't follow a court decision it has to follow. Inadequate reasons can also amount to a legal error.<sup>11</sup>

[21] An important factual error happens when the General Division bases its decision on a factual finding it made by ignoring or misunderstanding relevant evidence.<sup>12</sup>

[22] The principles of natural justice are concerned with procedural fairness. The right to a fair hearing before the Tribunal includes certain procedural protections, such as the right to an impartial and unbiased decision-maker.

[23] If the General Division made any of the above errors, then I can intervene.<sup>13</sup>

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<sup>10</sup> See pages AD13-1, AD14-1 to AD14-4, AD15-1 to AD15-2.

<sup>11</sup> See *Doucette v Canada (Minister of Human Resources Development)*, 2002 FCA 292, at paragraph 6, citing *R v Sheppard*, 2002 SCC 26.

<sup>12</sup> This is a plain language explanation of section 58(1)(c) of the DESD Act which says a factual error happens when the General Division has "based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it."

<sup>13</sup> See section 58(1) of the DESD Act.

**The General Division accepted that the Claimant voluntarily left his job and found he didn't have just cause**

[24] The General Division accepted that the Claimant voluntarily left his job. It wrote, "I accept that the Appellant voluntarily left his job. He stopped reporting for work after November 28, 2024, because he was in jail."<sup>14</sup>

[25] The General Division also stated the following in its decision:

- At paragraph 15 it wrote "Getting charged for a crime is not completely random. In our criminal justice laws, police need reasonable and probable grounds—not just a hunch—to lay a charge and detain a person."
- At paragraph 16 it wrote: "This means that it is more likely than not that the Appellant's own actions that led to his arrest, which directly prevented him from attending work. When incarceration results from one's own actions, job loss is considered voluntary leaving."
- At paragraph 26 it wrote: "I don't find the Appellant's testimony credible. The Canadian legal system makes sure that people who don't have a lawyer get to speak with a publicly paid lawyer called duty counsel, within hours of being arrested so that they know their legal rights. It would be hard to imagine a situation where someone was held in jail for days without access to a public lawyer. The Appellant hasn't provided any evidence to me showing he didn't have access to a lawyer until February 2025."

[26] The General Division concluded that the Claimant didn't have just cause to voluntarily leave his job because a reasonable alternative would have been to ask his lawyer to contact his employer to report his absence from work while he was in jail.<sup>15</sup>

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<sup>14</sup> See paragraph 9 of the General Division decision.

<sup>15</sup> See paragraphs 28 and 30–31 of the General Division decision.

## **The parties' arguments to the Appeal Division**

[27] The Claimant argues that the General Division made a legal error by misapprehending the evidence and not properly applying the legal test for voluntary leave.<sup>16</sup> He says that there was no clear and unequivocal act to separate from his job because he could not anticipate his absence, he was unable to contact his employer and was denied access to a lawyer for a prolonged period.

[28] He submits that the General Division failed to consider that voluntary resignation requires a "clear and unequivocal" act by the party seeking to end the employment relationship. He also says that the General Division erred when it found there wasn't "any evidence" that he didn't have access to a lawyer until February 2025 because he testified about that.

[29] The Claimant also argues that the General Division made other legal and important factual errors that were not supported by the evidence, instead relying on various presumptions in its decision. And he submits that the General Division's written rationale amounts to a reasonable apprehension of bias because it wrongly relied on its own presumptions to decide the voluntary leave issue.<sup>17</sup>

[30] The Commission disagrees and argues that the General Division correctly applied the law, considered all of the evidence and provided clear reasons for its decision. It submits that the General Division didn't make any legal or important factual errors.<sup>18</sup>

[31] The Commission argues that it doesn't matter if the Claimant didn't initiate the separation because it was a "no call/no show situation," so whether the issue is

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<sup>16</sup> See section 29(c) of the EI Act says that just cause for voluntarily leaving or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances (including any of the circumstances listed in the provision).

<sup>17</sup> The Claimant's written arguments are set out at pages AD1-9 to AD1-14, AD1A-1 to AD1A-7, AD14-1 to AD14-4 and AD15-1 to AD15-2.

<sup>18</sup> The Commission's written arguments are set out at pages AD3-1 to AD3-6 and AD13-1.

considered voluntary leave or misconduct, both result in a disqualification to benefits. As noted above, I did ask the Commission for written submissions about this issue.<sup>19</sup>

[32] I also asked the Commission specifically about the General Division's presumptions and whether that amounted to a reviewable error. The Commission agreed that the General Division might have erred in its decision when it relied on its presumptions.

### **The General Division made errors in its decision**

[33] I find that the General Division erred when it *accepted* that the Claimant voluntarily left his job.<sup>20</sup> The voluntariness was a disputed fact between the parties. The Claimant made arguments about why the separation from his job wasn't voluntary, namely that he was in jail and could no longer report to work. But it didn't clearly deal with his argument that he didn't *voluntarily* leave his job.

[34] The Federal Court of Appeal (FCA) in *Canada (Attorney General) v Peace* decision says that "under subsection 30(1), the determination of whether an employee has voluntarily left his employment is a simple one. The question to be asked is as follows: did the employee have a choice to stay or to leave?"<sup>21</sup> The General Division had to decide whether the Claimant had a choice to stay or to leave his job.

[35] There was evidence before the General Division that the Claimant didn't have access to his lawyer because he testified about this, so it erred when it said there wasn't "any evidence."<sup>22</sup>

[36] The parties agree and I also find that the General Division erred by making presumptions in its decision that were used to support its factual findings (see para. 25 above).<sup>23</sup> That amounted to a legal and important factual error. There was little evidence before it about why the Claimant was charged. It found his testimony that he didn't have

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<sup>19</sup> See pages AD12-1 to AD12-3 and AD13-1.

<sup>20</sup> See paragraph 9 of the General Division decision.

<sup>21</sup> See *Canada (Attorney General) v Peace*, 2004 FCA 56 at paragraph 15.

<sup>22</sup> See paragraphs 22–23 of the General Division decision.

<sup>23</sup> See paragraphs 15, 16 and 26 of the General Division decision.

access to a lawyer for a prolonged period wasn't credible and based that finding on how it said the Canadian legal system operated.<sup>24</sup>

[37] Decision-makers are presumed to be impartial and unbiased. An allegation for bias cannot rest on mere suspicion, pure conjecture, insinuations, or mere impressions.<sup>25</sup>

[38] The test for establishing bias is whether an informed person, viewing the matter realistically and practically and having thought the matter through, would conclude that it was more likely than not that the General Division member, whether consciously or unconsciously, would not decide the case in a fair manner.<sup>26</sup>

[39] I am persuaded by the Claimant's arguments on this issue. Having reviewed the General Division's reasoning and having thought the matter through, I think would lead an informed person to conclude that it was more likely than not, its reliance on presumptions, which were not founded in the evidence, amounted to a reasonable apprehension of bias in this case. Respectfully, this resulted in a breach of natural justice.<sup>27</sup>

[40] Since I've already found the General Division made errors, I don't need to consider any further errors. I can intervene in the General Division's decision.

### **Fixing the errors**

[41] There are two options for fixing errors made by the General Division.<sup>28</sup> I can either send the file back to the General Division for reconsideration or give the decision that the General Division should have given. If I substitute with my own decision, I can make any necessary findings of fact.<sup>29</sup>

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<sup>24</sup> See paragraph 26 of the General Division decision.

<sup>25</sup> See *Arthur v Canada (Attorney General)*, 2001 FCA 223.

<sup>26</sup> See *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC).

<sup>27</sup> See section 58(1)(a) of the DESD Act.

<sup>28</sup> See section 59(1) of the DESD Act.

<sup>29</sup> See section 64 of the DESD Act.

[42] The Claimant argues that the Appeal Division should substitute with its own decision. He says the record is complete, there is no new evidence, and the proceedings have already been prolonged. As well, he is experiencing some financial hardship.

[43] In my substituted decision, the Claimant wants to me decide that he didn't voluntarily leave his job. In the alternative, if I find that he did voluntarily leave his job, then he says that he had just cause and no reasonable alternative because every aspect of his arrest and incarceration was beyond his control.<sup>30</sup>

[44] The Commission agrees that the Appeal Division should substitute with its own decision but says that I should find the Claimant was disqualified to benefits for the same reasons the General Division did.

### **I am returning the matter to the General Division for reconsideration**

[45] I acknowledge that the parties want me to substitute with my own decision, but in this particular case it isn't appropriate for me to do that. The Claimant is entitled to a fair process, and that includes an impartial decision-maker. I find that the parties haven't had a full and fair opportunity before the General Division. The only way to remedy this is to send the file back to the General Division for reconsideration.

## **Conclusion**

[46] The Claimant's appeal is allowed. The General Division made reviewable errors and the matter will return to the General Division for reconsideration by a different member.

Solange Losier  
Member, Appeal Division

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<sup>30</sup> See page AD14-3.