



Citation: *CK v Canada Employment Insurance Commission*, 2026 SST 223

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	C. K.
Respondent: Representative:	Canada Employment Insurance Commission Stephanie Tollefson
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Decision under appeal:	General Division decision dated December 29, 2025 (GE-25-3237)
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Tribunal member:	Stephen Bergen
Type of hearing:	Teleconference
Hearing date:	March 5, 2026
Hearing participants:	Appellant Respondent's representative
Decision date:	March 23, 2026
File number:	AD-26-15

Decision

[1] The appeal is allowed. The General Division made errors of law. I am returning the matter to the General Division to reconsider.

Overview

[2] C. K. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant left his job on December 4, 2024. The Commission determined that he quit his employment because he wanted to take a vacation before he started work at a new job. It said that he did not have just cause for leaving. This meant it could not pay him benefits.

[4] The Claimant asked the Commission to reconsider. He said he had been laid off and that he had not quit. The Commission would not change its decision, so the Claimant appealed to the General Division of the Social Security Tribunal.

[5] The General Division dismissed the Claimant's appeal. It confirmed that he voluntarily left his employment and that he did so without just cause. It said that he was disqualified from receiving benefits. The Claimant appealed to the Appeal Division.

[6] I am allowing the appeal. The General Division made errors of law. I have decided that the matter must be returned to the General Division to reconsider.

Issues

[7] The issues in this appeal are:

- a) Did the General Division make an error of law by failing to consider the Claimant's language barrier, when it weighed his statements to the Commission?

- b) Did the General Division make an error of law by failing to consider whether the Claimant had a reasonable assurance of employment in the immediate future?
- c) Did the General Division make an error of law by finding that the Claimant was disqualified when he had accumulated sufficient hours to qualify after leaving his job?

Analysis

General legal principles for appeals to the Appeal Division

[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

The General Division made an error of law by not considering the Claimant's language barrier

[9] The General Division identified an apparent conflict between the version of events that the Claimant related through his testimony, and what he had told the Commission. It preferred the evidence of the Claimant's statements to the Commission over his testimony.

[10] The General Division made an error of law. Its reasons do not show that it considered the effect of his language barrier.

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).

[11] The General Division understood that the Claimant told the Commission that he resigned and that he had secured a new job before resigning. The Claimant denied this in his testimony. He said that he had not said he quit and stated that he did not find a new job until after he left his old job.

[12] The member asked the Claimant to explain the contradiction, and the Claimant suggested that there may have been a problem with Google Translate. The member told the Claimant repeatedly that the two versions were two completely different stories. It dismissed his explanation, telling him that the differences could not be explained by a problem with Google Translate.² The General Division did not otherwise explore whether, and to what degree, the Claimant had been able to communicate his meaning to the Commission.

[13] The Claimant maintains that the Commission misunderstood him. He attributes this to a language barrier. Because of this, he believes that the General Division should have accepted his testimony or given it more weight than it gave the Commission's notes of conversations.

[14] It is the General Division's job to assess credibility and to weigh the evidence. But it must also adequately explain why it prefers some evidence over other evidence, having regard to all those factors that could affect the weight of evidence.

[15] The General Division gave reasons for why it preferred the Claimant's earlier statements to the Commission. It explained that the Claimant had told the Commission on "several occasions" that he resigned because he found another job, and that he had said he quit in his application for benefits.

[16] The General Division also noted that the Claimant denied that he spoke to the Commission. The Claimant testified that he never talked to the Commission face to face, or on the phone, or had a meeting.³ The General Division rejected this evidence on the basis that the Commission had notes of telephone conversations with him.

² Listen to the audio record of the General Division hearing at timestamp: 01:15:00 to 01:16:40.

³ Listen to the audio record of the General Division hearing at timestamp: 01:09:33

[17] Although the General Division gave reasons for preferring the Claimant's earlier statements, it ignored a relevant factor. Its reasons do not demonstrate that it considered how the Claimant's language barrier may have affected the reliability of those earlier communications. A significant language barrier may have existed and the Commission may have misunderstood him. If so, this would be relevant to the weight that should be given to the Claimant's statements to the Commission, relative to his affirmed testimony provided through an official interpreter.

[18] There was evidence to suggest that the Claimant had difficulty communicating in English. While waiting for the official interpreter to join the General Division hearing, the member tried to talk to the Claimant. It is apparent from listening to the audio record that the Claimant's English was poor. When asked by the member, he acknowledged that he spoke "a little" English. He also confirmed that he had someone with him on the call that spoke English. A female voice can sometimes be heard in the background speaking to him in his language while the member was speaking to him.

[19] The Claimant also testified that it was his wife that filed his application.⁴ In at least one of the two recorded telephone discussions with the Commission, he turned the phone over to his wife to speak for him.⁵ This allows that the Claimant may never have directly discussed his claim with the Commission.

[20] I accept that the General Division made an error of law. Its reasons do not show that it considered the Claimant's language barrier when it chose to give the notes of his communications with the Commission more weight than it gave his testimony.

The General Division made an error of law by not considering whether the Claimant had a reasonable assurance of employment

[21] The General Division made an error of law by not analyzing whether the Claimant had a reasonable assurance of employment in the immediate future.

⁴ Listen to the audio record of the General Division hearing at timestamp: 01:24:17.

⁵ See GD3-30.

[22] The Claimant maintained that he did not leave his job voluntarily, but the General Division decided that he did. Because of this, the General Division had to also decide if the Claimant had reasonable alternatives to leaving, having regard to all the circumstances.⁶ One of the circumstances that must be considered - where it is suggested by the evidence - is a "reasonable assurance of employment in the immediate future."⁷

[23] The Commission has acknowledged that the Claimant had secured new employment before leaving his job. The General Division agreed. It found as fact that the Claimant had obtained another job before he quit.⁸

[24] Having concluded that the Claimant arranged his next job before leaving, the General Division had an obligation to consider whether his new job was in the "immediate future," and to consider how this impacted his reasonable alternatives.

[25] Whatever the circumstances under which the Claimant left his job, no one disputed that his last day at the work site was December 4, 2024. He testified that his new job was to start January 8, 2025, which was confirmed by his Record of Employment.⁹ So, the Claimant had secured a job that was to start roughly five weeks after he left.

[26] The Commission argued that the reason the Claimant left his job early was to take a vacation.¹⁰ However, the Claimant testified that he and a number of others were laid off from their fly-in camp job, and that everything was closed over the Christmas/New Year period.¹¹ He said the Union found him the same sort of work at a different employer in B., but that job would not begin until January.¹² He said this allowed him to take a vacation.

⁶ See section 29(c) of the EI Act.

⁷ See section 29(c)(vi) of the EI Act.

⁸ See para 19 of the General Division decision.

⁹ See GD3A-33; Listen to the audio record of the General Division hearing at timestamp 01:07:10.

¹⁰ See GD4B-4, AD4-7.

¹¹ Listen to the audio record of the General Division hearing at timestamp 01:22:40.

¹² Listen to the audio record of the General Division hearing at timestamp 1:12:45; 1:13:15.

[27] The General Division did not consider what caused the delay between the two jobs. It did not decide whether the Claimant took a vacation because he had time between jobs, or whether he took time between jobs so that he could take a vacation. Depending on how the evidence is weighed and the law is interpreted, the General Division could have found that the Claimant's new job was "in the immediate future" despite the intervening weeks.

– **Disqualification**

[28] The Commission concedes that the General Division made one other error of law, and I agree.

[29] The General Division stated that the Claimant was disqualified because he voluntarily left his job without just cause. Disqualification means that the Claimant is not entitled to any benefits. The Commission says this is an error of law because the Claimant accumulated sufficient hours after leaving his original job to qualify for benefits.

[30] In these circumstances, the law does not say that the Claimant should be disqualified. Assuming the Claimant voluntarily left his job without just cause, the consequence is that the insurable hours from the job he left cannot be used in calculating the Claimant's wage rate or the number of weeks of benefits to which he is entitled.¹³

– **Other errors**

[31] The Claimant asserted that the General Division made other errors.

[32] He believes that the General Division acted in a way that was procedurally unfair by not meaningfully addressing his layoff explanation and by not considering whether relevant evidence could be reasonably obtained.

[33] He also suggests that the General Division made an error because it did not

¹³ See section 30(6) of the EI Act.,

- clarify the circumstances of his departure from the job site,
- examine whether the employer's actions were consistent with a layoff or whether he had been removed from the work site,
- consider how his employment and industry were structured around work rotations, or
- consider how his union was involved in the hiring system and in finding his subsequent job.

[34] The Claimant has characterized these omissions both as errors of law and as fairness errors.

[35] However, I have already found errors in the General Division's decision. I do not need to consider the Claimant's other arguments, because I am sending the matter back to the General Division to reconsider.

Remedy

[36] I have the power to send the matter back to the General Division to reconsider, but I also have the power to make the decision that the General Division should have made.¹⁴

[37] The Claimant would like me to allow the appeal and find that the General Division made errors. He asks that I make the decision that the General Division should have made.

[38] The Commission also asks that I make the decision the General Division should have made. It wants my decision to dismiss the appeal, except that it would have me modify the General Division's decision to strike its conclusion that the Claimant was disqualified from receiving benefits.

[39] I acknowledge that both parties would like me to make the decision. However, the record is not complete.

¹⁴ See section 59(1) of the DESDA.

[40] There is presently little or no evidence by which I might determine whether a language barrier between the Claimant and the Commission resulted in his evidence being misrepresented in his application or in the Commission's notes.

[41] I cannot say the extent to which the Claimant relied on Google Translate or on his wife, or his own limited understanding of English. There is no evidence of how accurately Google Translate distinguishes between the Turkish words such as "laid off" and "resign," or between "giving notice" and "informing," or if it can easily distinguish the Turkish past vs. present tense. Outside of Google Translate, it appears the Claimant relied on his wife to communicate with the Commission. However, there is little evidence of how fluently his wife speaks English, or of how well she understood the circumstances surrounding the Claimant's departure from his job.

[42] The General Division member told the Claimant that the Commission was saying it had spoken to his employer.¹⁵ I did not locate any such representation, but there is no evidence in the record that the Commission discussed with the employer how the Claimant came to lose his employment, or that it even contacted the employer. Therefore, there is no evidence from the employer to confirm whether it laid off employees on or about December 4, or of the details of the layoff if there was one.

[43] In addition, the General Division did not consider whether the Claimant had a reasonable assurance of employment. So, the Claimant was not given a fair chance to provide evidence as to whether he could have continued to work for his original employer (if he had not quit or been laid off) between December 4 and January 8, or in his industry generally, or if he could have chosen to start working for his new employer before January 8. Such facts could possibly be relevant to whether the Claimant's job new job was in the "immediate future."

[44] I am returning the matter to the General Division to reconsider.

¹⁵ Listen to the audio record of the General Division hearing at timestamp: 01:03:07.

Conclusion

[45] The appeal is allowed. I am returning the matter to the General Division for reconsideration of all issues.

Stephen Bergen
Member, Appeal Division