



Citation: *Canada Employment Insurance Commission v SK*, 2024 SST 699

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

# **Decision**

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Daniel McRoberts

**Respondent:** S. K.

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**Decision under appeal:** General Division decision dated  
March 18, 2024 (GE-24-398)

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**Tribunal member:** Glenn Betteridge

**Type of hearing:** Teleconference

**Hearing date:** June 19, 2024

**Hearing participants:** Appellant's representative  
Respondent

**Decision date:** June 20, 2024

**File number:** AD-24-258

## Decision

[1] I am allowing the Canada Employment Insurance Commission's (Commission) appeal. It has shown the General Division made a legal error.

[2] I am sending the case back to the General Division to be reconsidered by a different member.

## Overview

[3] S. K. is the Claimant in this case. He made a claim for Employment Insurance (EI) benefits after he left his seasonal job working as a truck driver.

[4] He quit about six weeks before the job was scheduled to end. He and his wife sold their house and bought a house in a community about five hours' drive away. They did this to cut their living costs and to be closer to her aging parents. He quit early because of the tight closing dates of the two properties and so he could move their possessions.

[5] The Commission decided the Claimant voluntarily left his job without just cause.<sup>1</sup> This meant he was disqualified from getting EI benefits.<sup>2</sup> The Commission upheld its decision when he asked it to reconsider.

[6] The General Division allowed the Claimant's appeal. It decided he had no reasonable alternative to quitting in all the circumstances that existed then. So, he wasn't disqualified from getting benefits.

[7] I gave the Commission permission to appeal the General Division decision.

## Issues

[8] There are two issues in this appeal:

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<sup>1</sup> See section 29 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> See section 30(1) of the EI Act.

- Did the General Division make a legal error when it didn't follow a court decision that says a person doesn't have just cause when they quit their job to relocate or for financial reasons?
- If the General Division made a legal error, how should I remedy (fix) that error?

## Analysis

### The law I have to consider

[9] The Appeal Division's role is different than the General Division's role. The law allows me to step in and fix the error where a party can show the General Division made a legal error.<sup>3</sup> It makes a legal error where it doesn't follow a court case it is bound to follow.

[10] In a voluntary leaving appeal, the Commission has to prove the person quit their job. If it can do that, the person can get benefits if they prove they had just cause for quitting. The courts have said this means it was more likely than not their **only reasonable option in the circumstances was to quit**.<sup>4</sup> The decision-maker has to consider all the circumstances that existed when they quit, including those listed in section 29(c) of the *Employment Insurance Act* (EI Act).<sup>5</sup>

### The General Division made a legal error when it didn't follow the *Graham* decision

[11] The Commission argued the General Division made a legal error when it decided the Claimant had no reasonable alternative to quitting when he did.<sup>6</sup> It says the evidence didn't show the client left his job for reasons recognized by the law as just

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<sup>3</sup> See section 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act). That section calls this a "ground of appeal." This is what I mean by an error.

<sup>4</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at paragraph 4.

<sup>5</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at paragraph 3; and section 29(c) of the EI Act.

<sup>6</sup> See the Commission's written argument at AD4-5.

cause. Quitting his job to relocate was a choice he made for personal reasons or to improve his financial situation.

[12] The Commission argued that in these circumstances, the General Division had to follow the Federal Court of Appeal's *Graham* decision.<sup>7</sup> But it didn't consider that decision.

[13] The Claimant didn't respond directly to the Commission's argument. Instead, he said the General Division made an error when it didn't base its decision on all the details of why he left work. He said it needed to hear more. Then he gave more details about his wife's parents' health, the care they needed, and the care he and his wife would provide. He also gave more details about the timing of the purchase and sale of the houses.

[14] I told the Claimant that I could not consider this new evidence when I make my decision.<sup>8</sup>

[15] The General Division found that the Claimant had no reasonable alternatives, based on the following circumstances—none of which come from section 29(c) of the EI Act:

- His house sold “unexpectedly” in mid-to-late October 2023, unexpectedly because it had been on the market since June 2023.
- He bought a new house and took possession on November 15, 2023.
- He had until November 30, 2023 (closing date) to move all his possessions from one house to the other—a five and a half hour trip, which he made three times.
- He needed bridge financing between the sale and purchase.

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<sup>7</sup> See *Canada (Attorney General) v Graham*, 2011 FCA 311.

<sup>8</sup> See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraphs 35 to 40.

- He would not have been able to keep his full-time job and move his possession.
- He didn't have enough time to secure a full-time job before the closing date.
- And because his job was seasonal, he could not get a leave of absence.<sup>9</sup>

[16] The *Graham* decision involved a student who left a part-time job to move home to his parents. He could save on living expenses and look for a summer job. The Federal Court of Appeal said that while he may have had good personal cause to leave his part-time job, he didn't have just cause under the EI Act.

[17] The *Graham* decision stands for three principles:

- Remaining employed until a new job is secured is, without more, generally a reasonable alternative to quitting.<sup>10</sup>
- A person's desire to improve their financial situation may be a good cause, but it's not just cause under the EI Act.<sup>11</sup>
- When the Tribunal applies the legal test for just cause, it has to view the facts through the proper definition of just cause from court decisions.<sup>12</sup>

[18] The General Division didn't consider the *Graham* decision, or any decisions from the Federal Courts about quitting a job to relocate, for financial reasons, or for purely personal reasons.

[19] Given the facts in the Claimant's case, the General Division was bound to consider and apply the principles from the *Graham* decision or follow other court decisions with similar facts. It didn't do that. So, it made a legal error.

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<sup>9</sup> See the General Division decision at paragraphs 17 to 27.

<sup>10</sup> See *Canada (Attorney General) v Graham*, 2011 FCA 311 at paragraph 6.

<sup>11</sup> See *Canada (Attorney General) v Graham*, 2011 FCA 311 at paragraph 6.

<sup>12</sup> See *Canada (Attorney General) v Graham*, 2011 FCA 311 at paragraph 9.

## **The parties agreed that if I found an error, I should send the case back to the General Division**

[20] The law gives the Appeal Division the power to fix a General Division error.<sup>13</sup>

[21] At the hearing, the parties agreed that I should fix the error by sending the case back to the General Division.

[22] The Claimant said the decision in his appeal should be based on all the evidence about why he left work when he did. The Commission said that it appeared the Claimant had more evidence—especially about the health situation and care needs of his wife’s parents—that could be quite significant. It said the General Division member didn’t ask additional questions about that circumstance. So, the Commission says it would be in the interest of natural justice to return the case to the General Division so it can assess evidence about and consider those circumstances.

[23] I agree with the parties. So, I am sending the case back to the General Division to be reconsidered by a different member.

## **Conclusion**

[24] The Commission has shown the General Division made a legal error.

[25] I am sending the case back to the General Division to be considered by a different member.

[26] Under the test for voluntary leaving, the General Division can consider circumstances that existed **at the time the Claimant quit**. The Claimant can gather **evidence from that time**, which the Commission seems interested in. This might include information about his wife’s parents’ health, their health care needs, the services

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<sup>13</sup> See section 59(1) of the DESD Act.

available to them in their community, and what care he and his wife were expecting to give them.

[27] The General Division will now open a new appeal file for the Claimant. Once it does that, the Claimant can send in evidence and arguments. The sooner the General Division gets information from the Claimant, the sooner it can send it to the Commission to review.

Glenn Betteridge  
Member, Appeal Division