



Citation: *Canada Employment Insurance Commission v RH*, 2025 SST 24

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

# **Decision**

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

**Respondent:** R. H.

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**Decision under appeal:** General Division decision dated September 16, 2024  
(GE-24-2250)

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**Tribunal member:** Elizabeth Usprich

**Type of hearing:** Videoconference

**Hearing date:** November 27, 2024

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

**Decision date:** January 14, 2025

**File number:** AD-24-635

## Decision

[1] The appeal is allowed.

[2] The General Division made an error of law. I am giving the decision the General Division should have given. The Claimant voluntarily left his job without just cause. Section 33, a disentitlement for an anticipated loss of employment, doesn't apply in this case. The Claimant is disqualified, not disentitled, from receiving EI benefits.

## Overview

[3] R. H. is the Claimant and the Respondent in this case. He applied for Employment Insurance (EI) benefits. The Claimant had a temporary job as a concession attendant while the X (X) were in the NHL playoffs in 2022.

[4] On the way to his shift on May 26, 2022, the Claimant was in a car accident. He didn't go in for his shift. He decided that because his job was ending soon he wouldn't return to work.

[5] The Canada Employment Insurance Commission (Commission) decided the Claimant voluntarily left his job without just cause. It imposed an indefinite disqualification on EI benefits that started on May 22, 2022. The Claimant asked the Commission to reconsider, but it didn't change its position.

[6] The Claimant appealed to the Social Security Tribunal (Tribunal) General Division. The General Division agreed with the Commission that the Claimant had voluntarily left his job without just cause. But the General Division applied section 33 of the EI Act. It decided the Claimant only had a disentitlement from May 27, 2022, to June 6, 2022. The shorter disentitlement meant that after June 6, 2022, the Claimant could have been entitled to EI benefits.

[7] The Commission appealed the General Division's decision. It says the General Division made an error of law. It says that section 33 doesn't apply in this case.

[8] The Claimant says the General Division made an error of fact. He disagrees that he voluntarily left his job. He says he was in a car accident and couldn't work.

## **Preliminary matter**

[9] During the hearing the Claimant was permitted to review the Commission's written submissions.<sup>1</sup> The Claimant didn't file written submissions. So, he had the opportunity to raise any errors he thought the General Division made.

## **Issues**

[10] The issues in this appeal are:

- a) Did the General Division make an important error of fact when it decided the Claimant voluntarily left his employment and had a reasonable alternative to leaving on May 26, 2022?
- b) Did the General Division make an error of law when it applied section 33 of the Employment Insurance Act and decided the Claimant should be disentitled, rather than disqualified, to EI benefits?
- c) If so, how should the error(s) be fixed?

## **Analysis**

[11] There are only certain grounds of appeal that the Appeal Division can consider.<sup>2</sup> Briefly, it has to be shown that the General Division did one of the following:

- It acted unfairly in some way.
- It decided an issue it shouldn't have, or didn't decide an issue it should have.

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<sup>1</sup> These were emailed to the Claimant on October 15, 2024. He acknowledged the receipt of these arguments and could find them during the hearing. The written arguments were also discussed at the case conference on November 14, 2024. The Tribunal also sent the "list of documents for your hearing" to the parties on November 19, 2024.

<sup>2</sup> See section 58(1) of the DESD Act.

- It made an error of law.
- It based its decision on an important error of fact.

[12] The Claimant says the General Division made important errors of fact. He says he didn't voluntarily leave his employment. Rather, his job finished because it was the end of his contract. As well, the Claimant says the General Division shouldn't have decided he had a reasonable alternative to quitting.

[13] The Commission says the General Division didn't make any important errors of fact. Instead, it says the General Division made an error of law. The Commission says the General Division applied section 33 of the EI Act incorrectly, because that section doesn't apply given the facts of the case.

### **The General Division didn't make an important error of fact**

[14] 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>3</sup> This means the General Division had to ignore, misunderstand or overlook the evidence in some way.

[15] The Claimant argues he didn't voluntarily leave his job. He says he was hired on a temporary contract to do concessions while the X were in NHL playoffs. When the X were eliminated from the playoffs, his contract would end. Before the X playoffs ended, the Claimant was in a car accident on May 26, 2022. The Claimant never returned to work.

[16] The General Division decided the Claimant voluntarily left his job.<sup>4</sup> The Claimant doesn't agree with the decision. The General Division relied on the correct law for voluntarily leaving.<sup>5</sup> The Claimant's argument is based on the same facts he told the General Division.

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<sup>3</sup> See section 58(1)(c) of the DESD Act.

<sup>4</sup> See the General Division decision at paragraphs 11 to 15.

<sup>5</sup> See the General Division decision at paragraph 12.

[17] The Claimant says he was on a medical leave because he was in a car accident and was unable to work. The General Division accepted the Claimant was in a car accident.<sup>6</sup> The Claimant didn't provide anything to the General Division to show he was on a medical leave.<sup>7</sup> The General Division weighed this evidence and decided the Claimant didn't have medical proof. It decided the Claimant voluntarily left his job.<sup>8</sup>

[18] The General Division then had to decide if the Claimant left his job without just cause. Just cause exists if the Claimant had no reasonable alternative but to leave his job. The General Division decided the Claimant had reasonable alternatives to leaving his job. One of the reasonable alternatives was that the Claimant could have asked for a leave of absence because of the accident.<sup>9</sup>

[19] The Commission noted it told the Claimant that his employer said the Claimant abandoned his job.<sup>10</sup> The Claimant had a copy of the Reconsideration File before his General Division hearing. So, the Claimant was aware of his employer's position.<sup>11</sup>

[20] The General Division grappled with the evidence.<sup>12</sup> It considered the evidence the Claimant presented. It then weighed the evidence and made findings. I can't reweigh the evidence, as that isn't the role of the Appeal Division.

[21] The General Division is the trier of facts. It is given some freedom when it makes its findings of fact. The General Division's findings in this case aren't "willfully going contrary to the evidence".<sup>13</sup> The General Division didn't misunderstand, ignore or overlook the evidence. I don't find the General Division made an important error of fact.

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<sup>6</sup> See the General Division decision at paragraphs 4, 6, 14, 23, 27, 28, and 31.

<sup>7</sup> Listen to the General Division hearing recording at 00:31:12 to 00:39:58.

<sup>8</sup> See the General Division decision at paragraphs 14 and 15.

<sup>9</sup> See the General Division decision at paragraph 31.

<sup>10</sup> See GD3-30 of the Commission's Reconsideration File.

<sup>11</sup> Listen to the General Division hearing recording at 00:31:40 where this was discussed at the hearing.

<sup>12</sup> See, for example, the General Division decision at paragraphs 29, 36, 39 and 40.

<sup>13</sup> See *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

## **The General Division made an error of law when it applied section 33 of the Employment Insurance Act**

[22] When someone voluntarily leaves a job without just cause, it usually results in a disqualification from EI benefits. There are specific rules about when a disqualification ends.<sup>14</sup>

[23] In this case, the General Division applied section 33 of the EI Act.<sup>15</sup> It decided the Claimant was disentitled to EI for a short period of time, rather than a disqualification which is the typical outcome. Section 33 is about an anticipated loss of employment. It applies in limited circumstances. One of the circumstances is if a person voluntarily leaves their employment without just cause within three weeks before the expiration of a **set term** contract.

[24] The Claimant says he had a set term contract. Specifically, the contract would end when the X were out of the playoffs. He says there is no error with the General Division's decision.

[25] The Commission says at the time the Claimant voluntarily left his employment without just cause it was unknown when the X playoff season would end. The Commission says only the circumstances that happened at the time of leaving can be considered. So, on May 26, 2022, it was impossible to know how much longer the X would be in the playoffs.<sup>16</sup>

[26] The Commission agrees that on June 6, 2022, the X were eliminated from the playoffs. But the Commission says things can only be examined based on the information known on the date the voluntarily leaving happened. So, we can only consider the known information on May 26, 2022.

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<sup>14</sup> See section 30 of the *Employment Insurance Act* (EI Act).

<sup>15</sup> See the General Division decision at paragraphs 17 and 33.

<sup>16</sup> The Stanley Cup playoffs happened to go to the end of June 2022. But an additional game would have been necessary if the full seven games had been required.

[27] Section 33 of the EI Act operates in conjunction with section 29. The General Division was correct to consider this section of the EI Act.<sup>17</sup> But it made an error in its analysis.

[28] The section is about an anticipated job loss. But it isn't enough that a person thinks their employment will end. It requires that someone has a set end contract date or has a layoff date. The voluntary leaving must then occur within three weeks of the set end term or layoff date.

[29] In this case, the Claimant says there was a set term of employment. But I don't find that was the case. There was no specific set end term. The end date wasn't known. The employment was for as long as the X were in the NHL playoffs. On May 26, 2022, the X were still in the playoffs. It wasn't known when they would be eliminated.

[30] Section 33 doesn't apply. When one voluntarily leaves a job, things are assessed on the voluntary leaving date. It's the same with section 33. The assessment must be on the date the voluntary leaving occurred.

[31] On May 26, 2022, it wasn't known how much longer the X would be in the playoffs. It could have been for more than three weeks. Therefore, the Claimant didn't have a set end of contract date. As a result, section 33 can't apply in this instance. This means the General Division has made an error of law.

## Remedy

[32] I have found an error. There are two main ways I can remedy (fix) it. I can make the decision the General Division should have made. I can also send the case back to the General Division.<sup>18</sup>

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<sup>17</sup> See *IS v Canada Employment Insurance Commission*, 2022 SST 203 which is an Appeal Division decision that notes it's an error of jurisdiction for the General Division to fail to consider section 33 of the EI Act.

<sup>18</sup> Section 59(1) of the DESD Act allows me to fix the General Division's errors in this way.

[33] Both parties say I should give the decision the General Division should have given. I agree. There was a fair hearing and both parties had full opportunity to present their evidence and submissions to the General Division.

### **The Claimant voluntarily left his job and doesn't have just cause**

#### **– The Claimant voluntarily left his job**

[34] I have reviewed the General Division's findings about whether the Claimant voluntarily left his job.<sup>19</sup> I accept the Claimant voluntarily left his job on May 26, 2022.<sup>20</sup> I am adopting this finding of the General Division. I have already considered whether there was an important error of fact with this finding. I decided there wasn't. So, there is no reason to interfere with it. The Claimant voluntarily left his job.

#### **– The circumstances that existed when the Claimant left his job**

[35] The General Division correctly explained the law about having just cause for voluntarily leaving employment.<sup>21</sup> The General Division went through the circumstances that existed at the time the Claimant stopped working.<sup>22</sup>

[36] Neither party has taken an issue with how the General Division reviewed the Claimant's circumstances. I am adopting the General Division's findings about the circumstances that existed when the Claimant left his job. I am adopting these findings because there has been no allegation that there was an error in any of these findings.

#### **– The Claimant had reasonable alternatives to leaving his job**

[37] The General Division reviewed the Claimant's reasonable alternatives to leaving his job.<sup>23</sup> The General Division decided the Claimant could have requested time off or a leave of absence from his job. The General Division decided the Claimant had a

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<sup>19</sup> See the General Division decision at paragraphs 11 to 15.

<sup>20</sup> See the General Division decision at paragraph 34.

<sup>21</sup> See the General Division decision at paragraphs 17 to 21.

<sup>22</sup> See the General Division decision at paragraphs 22 to 28.

<sup>23</sup> See the General Division decision at paragraphs 29 to 32.

reasonable alternative. I am adopting this finding of the General Division as there is no reason to interfere with it.

[38] So, I find the Claimant had at least one reasonable alternative to leaving his job. Because there is one reasonable alternative it means the Claimant didn't have just cause for voluntarily leaving his job.

### **Period of disentitlement/disqualification**

[39] Section 33 doesn't apply. So, a shorter period of disentitlement isn't possible. The Claimant voluntarily left his job without just cause. So, he is disqualified, not disentitled, from receiving EI benefits.

### **Conclusion**

[40] The appeal is allowed.

[41] The General Division made an error of law. Section 33, a disentitlement for an anticipated loss of employment, doesn't apply in this case. The Claimant is disqualified, not disentitled, from receiving EI benefits.

Elizabeth Usprich  
Member, Appeal Division