



Citation: *LM v Canada Employment Insurance Commission*, 2025 SST 88

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: L. M.

Respondent: Canada Employment Insurance Commission
Representative: Josée Todd

Decision under appeal: General Division decision dated September 13, 2024
(GE-24-2624)

Tribunal member: Stephen Bergen

Type of hearing: Teleconference

Hearing date: January 10, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: February 4, 2025

File number: AD-24-627

Decision

[1] I am allowing the appeal. The General Division made errors of fact.

[2] I have substituted my decision for that of the General Division.

[3] L. M. (the “Claimant”) did not leave her employment voluntarily. She is not disqualified from receiving Employment Insurance (EI) benefits for leaving without just cause.

Overview

[4] The Claimant worked at a northern construction camp. On March 25, 2024, she told her employer’s on-site human resources (HR) representative that she was resigning as of April 3, 2024. April 3 was the day she was scheduled to rotate off the construction site. She believed she withdrew her resignation in an email to her HR representative, but the employer maintained that she was no longer an employee.

[5] The Claimant applied for EI benefits. The Respondent, the Canada Employment Insurance Commission (Commission), decided it could not pay her benefits because she voluntarily left her job without just cause.

[6] The Claimant asked the Commission to reconsider, but it would not change its decision. When the Claimant appealed to the General Division of the Social Security Tribunal, the General Division dismissed her appeal. It confirmed that the Claimant voluntarily left her job and that she did not have just cause for doing so. The Claimant appealed the General Division’s decision to the Appeal Division.

[7] I am allowing the appeal. The General Division made errors of fact. I have made the decision that the General Division should have made. The Claimant did not leave her job voluntarily, so she is not disqualified from receiving benefits.

Preliminary matters

New evidence

[8] In the Claimant's application and supplementary submission to the Appeal Division, she provided details of her supervisor's behaviour, as well as of the investigation into that behaviour and how she came to reconsider her resignation.¹ Many of these details were not in the evidence provided to the General Division. She also included a screenshot of a text exchange which had not been submitted to the General Division.

[9] As I discussed in my leave to appeal decision, I do not have the power to consider this evidence because it was not available to the General Division. Therefore, I have not considered the Claimant's new evidence.

Method of proceeding

[10] The Claimant had requested the hearing to proceed by videoconference. At the time and day scheduled for the hearing, the Claimant was unable to connect to the call using the video feature, so the videoconference hearing could not proceed at that time.

[11] However, the Claimant had no objection to proceeding by teleconference. I was able to call the Claimant and invite her to the hearing where she appeared by teleconference without further difficulty. The Respondent Commission also participated by teleconference only.

Supplemental submissions

[12] Following the Appeal Division hearing, I wrote to both parties to ask for supplemental submissions on whether the Claimant voluntarily left her employment.

[13] I indicated that the circumstances surrounding the Claimant's verbal resignation gave rise to certain questions that neither party had adequately addressed in the

¹ See AD1, AD3.

hearing.² These questions concerned the employer's acceptance of the Claimant's resignation and the Claimant's efforts to retract her resignation.

[14] The Claimant responded on January 30, 2025, to say that she had nothing to add. The Commission responded with additional submissions on January 30, 2025.³

Issues

[15] The issues in this appeal are:

- a) Did the General Division make an error of fact or law by not considering evidence that the Claimant's working conditions could be affecting her health or safety?
- b) Did the General Division make an error of fact when it concluded that the HR advisor's request for the Claimant to email her resignation "wasn't to make her resignation official"?
- c) Did the General Division make an error of fact by failing to consider whether the employer accepted the Claimant's verbal resignation?
- d) Did the General Division make an error of fact by failing to consider the HR advisor's response to the Claimant's retraction of her resignation?

Analysis

[16] 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.

² My letter is AD5 in the Tribunal record.

³ See AD7.

d) The General Division based its decision on an important error of fact.⁴

Just cause

- **The General Division did not consider whether the Claimant’s working conditions were affecting her health or safety**

[17] According to the Employment Insurance Act (EI Act), a Claimant who voluntarily leaves their employment is disqualified from receiving benefits unless they can show “just cause.” To show just cause, they must show that they had no reasonable alternative to leaving, having regard to **all the circumstances**.⁵

[18] The EI Act lists a number of relevant circumstances. One of the circumstances listed is, “antagonism with a supervisor where the claimant is not primarily responsible for the antagonism.” Another is, “working conditions that constitute a danger to health or safety.”⁶

[19] The General Division expressly considered the “antagonism with a supervisor” circumstance. In fact, it accepted that the Claimant experienced antagonism with her supervisor.

[20] However, the General Division did not consider whether her working conditions were a danger to her health or safety.

[21] It understood that the Claimant related her stress and anxiety to how her supervisors treated her, and it also understood that it affected her health. It recited the Claimant’s evidence that she experienced stress and anxiety which affected her mental health. It noted that Claimant said this affected her sleep, and caused her to take a sick day on March 27, 2024.⁷

⁴ 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).

⁵ See section 29(c) and 30(1) of the EI Act.

⁶ See section 29(c)(iv) and (x) of the EI Act.

⁷ See paras 38 and 42 of the General Division decision.

[22] But the General Division made no finding as to whether the Claimant's experience of anxiety and stress resulted from her working conditions, whether it was a factor in her leaving, or whether it had an effect on her reasonable alternatives to leaving.

[23] In submissions to the Appeal Division, the Commission's representative agreed that there was evidence that the Claimant was experiencing stress and anxiety in response to her antagonistic relationship with her supervisor. The Commission conceded that the General Division made an error of fact by failing to consider evidence that the Claimant's working conditions were a danger to her health or safety.⁸

[24] I agree. There was evidence that the antagonistic relationship with her supervisor caused her anxiety, which directly affected her health negatively, including her ability to sleep. I also note that the Claimant drove a heavy rock truck, which requires focus and attention. Presumably, her stress and sleep problems also impacted her ability to focus and pay attention, or had the potential to do so.

[25] The General Division made an error of fact by failing to consider evidence of how work conditions affected her health or safety, and an error of law by failing to consider, "all the circumstances."

Voluntary leaving

- **The General Division's conclusion that the Claimant did not need to email her resignation to make it "official" was unfounded**

[26] The General Division stated that the on-site human resources (HR) advisor (whom I will refer to as "Ov") asked the Appellant (Claimant) to send an email advising of her resignation. It said that "This was so she could come back in the future. *It wasn't to make the resignation official.*"⁹(emphasis added).

⁸ See AD4-5.

⁹ See para 30 of the General Division decision.

[27] After the Appeal Division hearing, I invited supplemental submissions on whether the evidence supported the General Division's conclusion that the request for the emailed resignation was not to make the resignation official.

[28] The Commission responded by arguing that there was evidence to support the General Division's finding. It referred to the Claimant's statements and how she described her notice to Ov as her "resignation."

[29] When the General Division decided that the employer did not require an emailed resignation to make it official, it appears to have relied solely on what the Claimant said in her appeal submission. The Claimant had written that Ov told her to "be sure to write a letter of resignation so [she] would be able to come back."¹⁰

[30] The Claimant clearly understood Ov to have suggested she should confirm her resignation in writing to help her get hired back. Ov may have said this, and the Claimant may have understood her correctly. But there was no evidence that helps to explain why the employer would want her written resignation for this purpose. It would be reasonable for an employer to rehire an employee who resigned ahead of one who had abandoned their job. It is less obvious why it would prefer to rehire an employee who submitted a resignation in writing rather than a verbal notice to its HR representative.

[31] Putting that aside, whatever Ov told the Claimant about why she should resign with an email to the employer's HR department, there could also have been other reasons. The Claimant did not say that Ov told her this was the only reason for the request, and Ov's statement does not explain her reasoning.

[32] The Commission correctly notes that the employer did not state that the written resignation was required to make the resignation official. However, it was open to the General Division to infer such a requirement from the circumstances, even if it was unstated.

¹⁰ See GD6-4.

[33] Ov provided the Commission with a statement about the substance of her conversation with the Claimant. The statement was presumably prepared for the express purpose of documenting her discussion with the Claimant, the Claimant's intentions, and what Ov did in response.

[34] In that statement, Ov noted that she asked the Claimant to send an email advising of her resignation to a specific HR email address. She further recorded that the Claimant said she would send the email by the end of her shift March 25, the same day. The statement does not elaborate on the reason Ov asked the Claimant to send her resignation to the employer directly, or say what she told the Claimant about the reason for the request. Ov did not state that the Claimant's resignation would not be accepted until it is received in writing. Neither did she state that she was accepting the Claimant's verbal resignation.

[35] The Claimant's one statement is the only evidence that Ov asked her to email her resignation to help her re-employment prospects. However, this statement was only part of her evidence. The Claimant also insisted she did not quit and—in support of this position—she has repeatedly and consistently emphasized that she did not submit the requested resignation letter or actually submit her notice.¹¹

[36] This evidence is relevant in assessing whether Ov had “officially” accepted the Claimant's verbal resignation. The Claimant's various statements suggest that she believed her decision to not send in the emailed resignation was significant. They suggest that she understood from her conversation with Ov that her email was necessary to make her resignation official. Her statements are inconsistent with the General Division view that the requested written confirmation had the sole purpose of enhancing the Claimant's re-employment prospects.

[37] The Commission cited one Appeal Division decision and one Umpire decision for the proposition that a resignation does not need to be in writing to be effective.¹² I accept this proposition. However, it is one thing to say that, as a matter of law, a

¹¹ See GD3-21, GD3-35, GD3-38, GD2-11, GD6-2.

¹² See AD7-1.

resignation does not need to be in writing to be effective. It is another thing to say that the employer did not require the Claimant to submit her resignation in writing to make it official, on the particular facts of this case.

[38] The General Division made an error of fact in asserting that the employer did not require her resignation in writing to make the resignation “official” because it did not analyze what was included or omitted in Ov’s statement in context, or consider the Claimant’s insistence that she did not follow through by sending the employer her resignation in writing.

– **The General Division failed to consider whether the employer accepted the Claimant’s verbal resignation.**

[39] Ov’s statement does not indicate that she accepted the Claimant’s resignation. If Ov had authority to accept the Claimant’s resignation, there is no evidence that she did so. All that we know of her response is that she directed the Claimant to communicate her resignation to the employer in an email. This suggests that the authority lay elsewhere.

[40] If Ov did not have the authority to accept the Claimant’s resignation, there is no evidence that Ov, or anyone else, conveyed the Claimant’s verbal resignation to the employer, or its HR department at its offices, before the Claimant retracted it. Even though the Claimant told Ov she would email her resignation, the Claimant has stated repeatedly that she chose not to do so.

[41] The Commission acknowledges that the General Division made an error of fact by failing to analyze if and when the Claimant’s resignation was accepted.

[42] I find that the General Division made an important error of fact. It did not analyze whether the resignation was communicated to the employer or whether it was accepted by the employer, or determine when the employer finally accepted the Claimant’s resignation.

- **The General Division failed to consider whether the employer permitted the Claimant to retract her resignation.**

[43] The General Division decided that the Claimant resigned because she initiated the separation when she told both Ov and her supervisor that she was resigning on March 25, 2024.

[44] However, “voluntary leaving” is not necessarily synonymous with “initiating the separation.” A claimant may “initiate” a separation in some manner, but not follow through: A claimant may initiate a separation without voluntarily leaving.¹³

[45] The General Division disregarded the Claimant’s attempt to retract her resignation. The Claimant said that she told Ov that she wanted to retract her resignation within a couple of days of their discussion on March 25. This evidence was unchallenged. There was also unchallenged evidence that Ov responded by thanking her for reconsidering.¹⁴ There is no suggestion of any other response from Ov, or from any other employer representative before April 7, 2024.

[46] There was also evidence that other on-site supervisors continued to treat the Claimant in a way that suggests that they expected her employment to continue. “T,” the general foreman, and “K,” believed to be a project manager, approached the Claimant on March 28 to change her shift. When the Claimant resisted changes to her shift, “T” asked her to write out her reasons and give it to HR.¹⁵ The Claimant argued to the General Division that she did not think they would have done this if they accepted that she had resigned.

[47] In the Appeal Division hearing, I asked the Commission representative if she had anything to say about whether it was relevant that the Claimant had retracted or attempted to retract her resignation. The Commission maintained that the Claimant quit at the time she first told HR that she was resigning on March 25, and stated that the

¹³ See, for example, *CL v Canada Employment Insurance Commission*, 2023 SST 1383—where the Appeal Division held that the General Division made an error by understanding the Claimant to have agreed that she quit her job voluntarily, when she had only agreed that she initiated the separation from her job.

¹⁴ See GD2-11.

¹⁵ Ibid.

only question was the question posed in *Canada (Attorney General) v. Peace*, which is: Did she have a choice to stay or to leave?¹⁶

[48] In the Commission's supplemental submissions, it re-emphasized that the only facts that the General division needed to take into account were those at the time of the event. In the General Division's view, this is when she verbally resigned to Ov. Since the Claimant's attempted retraction was after the event, the General Division did not need to consider it.¹⁷

[49] The Commission also argued that Ov did not accept her retraction. She was just being polite when she thanked the Claimant for reconsidering her resignation. According to the Commission, Ov's polite response was irrelevant, and it was not an error for the General Division to ignore that piece of evidence.¹⁸

[50] I agree with the Commission that it must establish that the Claimant had a choice to stay or leave. However, the answer to that question is meant to determine whether the Claimant voluntarily left her employment.

[51] It is undisputed that the Claimant did not physically leave her place of employment or cease her work duties at the time that she first notified the employer. Nor is it necessarily true that her notice committed her to leave her employment at the end of her notice period.

[52] I say this because there is a question whether the employer actually accepted the Claimant's verbal resignation, as well as a question whether the employer accepted the Claimant's emailed retraction while she was still employed.

[53] Evidence that was relevant to whether the Claimant retracted her resignation before her resignation was accepted, or to whether her retraction was accepted, would also be relevant to determining whether and when she left her employment.

¹⁶ *Canada (Attorney General) v. Peace*, 2004 FCA 56.

¹⁷ See AD7-4.

¹⁸ *Ibid.*

[54] The Commission argued that the General Division did not need to consider evidence of the retraction or its acceptance because it was “after the event.” This is a circular argument: The same evidence may be necessary to define if, and when, that event actually occurred.

[55] The Commission cited *Lamonde* for the notion that “the only facts which must be taken into account are those existing at the time of the event.”¹⁹ However, the *Lamonde* analysis was not concerned with whether, or when, the claimant left. Having already established that the claimant had voluntarily left, *Lamonde* moved on to considering whether they had “just cause” for leaving. What *Lamonde* actually says is that the only circumstances relevant to “just cause” are the circumstances at the time the claimant takes leave from their employment.

[56] So far as the interpretation of Ov’s response to the Claimant, it is arguable that she responded as a courtesy only (as suggested by the Commission), and that it should not be taken to mean that she had accepted the Claimant’s retraction. However, since it is open to interpretation, and since Ov’s response may reasonably be understood as an acceptance of the Claimant’s retraction, the General Division should have at least considered it.

[57] The General Division made an important error of fact. It did not consider whether Ov accepted the Claimant’s resignation on behalf of the employer, how Ov responded to the Claimant’s retraction of her verbal resignation, or how her supervisors continued to plan her shifts or that they supply HR with her justification for her resistance to shift changes. This evidence is relevant to whether the Claimant’s verbal resignation meant that she voluntarily left her employment.

Remedy

[58] I have the power to make the decision that the General Division should have made, or I can send the matter back to the General Division for reconsideration.²⁰

¹⁹ *Canada (Attorney General) v. Lamonde*, 2006 FCA 44.

²⁰ See section 59(1) of the DESDA.

[59] The Commission said that I have all the information I need to make the decision. It originally conceded that the General Division did not properly consider how her antagonistic relationship with her supervisor impacted her health. More recently, it has also conceded that the General Division should have analyzed if, and when, the employer accepted the Claimant's resignation. However, the Commission submits that I should reach the same decision as the General Division even after I take those errors into consideration.

[60] The Claimant was less certain about whether she wanted me to make the decision or wanted me to send the matter back to the General Division. In either event, she maintained that the General Division should have allowed her appeal. She does not think she actually quit but—if she is found to have quit—she argued that she was forced to quit by the circumstances.

[61] I agree with the Commission that I have all the information I need; I will make the decision that the General Division should have made.

My decision

Did the Claimant voluntarily leave her employment?

– Evidence

[62] The undisputed evidence is as follows:

- a) The Claimant felt that she was being bullied by a project manager (Bb) and believed that there was a “toxic history” between Bb, the foreman at the “RCBC” worksite (Ry) and herself. (The General Division found as fact that the Claimant had an antagonistic relationship with her supervisor, Bb.)
- b) The Claimant asked to be transferred to a different work location nearby (described as “TIA”) where she would not have to work with Bb. When the Site Manager (Ls) denied her request on March 25, 2024, the Claimant told him that she would have to put in her notice. She also told Ov that she was resigning at the end of her work rotation on April 3, 2024.

- c) OV asked her to put her resignation in an email to the employer's HR and recorded that the Claimant would be doing so by the end of the day.
- d) The Claimant did not resign in writing or send an email to the employer.
- e) A "couple of days later," the Claimant emailed Ov to say she would not be putting in her notice after all.
- f) Ov responded to her email by thanking her for reconsidering.
- g) The Claimant took a sick day on March 27, 2024, because of stress and sleeping difficulties. On March 28, the General Foreman (Tt), and another project manager (Ky) asked her to change her shift. She explained that she could not change because she travelled to the worksite with a co-worker, and she could not afford to have her own transportation. T asked her to put her explanation in writing and give it to Ov.
- h) The Claimant worked to the end of her rotation on April 3, and then went home.
- i) She later tried to confirm her travel arrangements to return to the worksite but discovered she was locked out of her employee account. She contacted the employer's HR for help and spoke to its representative, "Hth." Hth informed the Claimant that she had resigned and was no longer an employee.

– Analysis

[63] I find that the Claimant did not voluntarily leave her employment.

[64] The EI Act gives "employment" its plain meaning. It is given the same definition in section 2(1) of the EI Act, as is found in Merriam-Webster's dictionary: Employment is, "the act of employment or the state of being employed."²¹ In the context of the EI Act, "voluntarily leaving employment," refers to leaving a job or employ. The particular

²¹ See Merriam-Webster dictionary online, accessed February 3, 2025, at 13:43 hours Eastern at <https://www.merriam-webster.com/dictionary/employment>

Merriam-Webster definition of “employ” that suits the EI context is “to provide with a job that pays wages or salary.”²² So “leaving employment” is leaving a job that pays wages or salary.

[65] The Federal Court of Appeal tells me that I must determine whether the Claimant left her job “voluntarily” by asking whether she had a choice to stay or to go.²³ This is a relatively easy analysis where a claimant has severed their ties to the employer at the same time that they tell the employer that they are quitting. It is more complex where the claimant gives notice of an intention to leave on a future date, but continues to work for the employer, in the meantime.

[66] Even so, the time a claimant first informs their employer of their decision to resign would normally be the relevant time to determine whether they, “voluntarily left.” This may be true even though they continue to work and get paid through their notice period. Generally speaking, they will have effectively “left their employment” on the day that they gave notice.

[67] However, this will not always be true. It depends on whether the employer has accepted the claimant’s notice as effective to terminate their employment.

[68] An employer may formally accept a claimant’s notice as their resignation. But an employer’s acceptance of the notice may also be inferred from the circumstances (such as where the employer hires a replacement or otherwise acts in reliance on the claimant’s resignation).²⁴

[69] When a claimant gives notice of their resignation but revokes it before the notice has expired or the employer accepts the resignation (formally, or by its actions), the claimant has not actually left their employment. Such a claimant may revoke their

²² See Merriam-Webster dictionary online, accessed February 3, 2025, at 13:44 hours Eastern at <https://www.merriam-webster.com/dictionary/employed>

²³ *Supra* note 15.

²⁴ See for example, Canadian Umpire Benefit (CUB) decision 1185.

resignation before the employer accepts it, just as an offer to purchase can be revoked before the buyer accepts the offer.

[70] If a claimant has revoked their resignation before it is “accepted,” there is no need to consider whether they had “a choice to stay or to go” at the time they gave their initial notice, because they have not left their employment.

[71] Likewise, a claimant cannot be said to have left their employment if the employer initially accepts their resignation but then permits them to reconsider and retract their resignation before they stop working for the employer or the notice period expires. Such a claimant has not left their employment either.

[72] In this case, the Claimant retracted her resignation within a couple of days, while she was still working for the employer on-site and still being paid by the employer.²⁵ There is no evidence that the employer accepted the Claimant’s resignation before she retracted it.

[73] The only recorded response to the Claimant’s verbal resignation is that of the on-site HR representative, Ov, who directed the Claimant to send an email to the employer’s HR with her resignation. On April 3, Hth informed the Claimant of the employer’s view that she had resigned, but there is no evidence of how or when Hth (or anyone else at the employer’s offices) learned of the Claimant’s March 25 verbal resignation, or whether they knew anything of her retraction.

[74] There is also no evidence that the employer acted in reliance on the Claimant’s resignation before she withdrew it. There is no evidence that the employer advertised for, or hired, a replacement, that it reallocated employees or resources to cover for the Claimant’s expected absence, that it paid any additional travel or other expenses, or that it acted in any other way to its detriment.

[75] In fact, the Claimant’s on-site supervisors seemed to be treating her as though her employment would continue. The Claimant noted that other employees in positions

²⁵ See Record of Employment at GD3-19.

of authority at the worksite (Tt and Ky) tried to direct the Claimant on March 28, to have her switch to a different shift. When she resisted, Tt asked her to justify her objections to HR.

[76] When the Claimant told Ov that she wanted to withdraw her notice, Ov responded by thanking her for reconsidering. I appreciate that the Commission takes the view that Ov was just being polite. I disagree. From the manner of Ov's response, I infer that she accepted the Claimant's retraction.

[77] If Ov understood the Claimant's original verbal resignation to be both sufficient and irrevocable, or if Ov were not authorized to accept the retraction, then it would hardly be polite or professional to respond by thanking the Claimant for reconsidering her resignation. One would expect that Ov would have educated the Claimant. She could have emphasized that the Claimant's resignation was final and settled, or warned her that she should still consider it to be final unless she heard otherwise.

[78] There is no other evidence to suggest that Ov refused the retraction, or that it was out of her hands at that point. There is no evidence that Ov told the Claimant that her retraction was ineffective or that—in the eyes of the employer—she was not an employee as of April 3. There is no evidence that anyone spoke to the Claimant before she rotated off the worksite to let her know she was not expected to return.

[79] The Claimant seems to be suggesting that her supervisors would not have gone to the trouble of changing her shift or had her explain her objections to HR, if they had known that the Claimant's employment was slated for termination at the end of her rotation in about five days.

[80] I accept that the Claimant's on-site supervisors were unaware of any change in the Claimant's employment status. Their directions to the Claimant would be inconsistent with their knowledge of the Claimant's resignation. I expect the Claimant's supervisors would not have been planning alternative work schedules involving the Claimant if they had been aware that she would not be coming back after April 3.

[81] However, I am not relying on evidence of what Tt and Ky may have told the Claimant on March 28 to establish that the Claimant had not resigned. I cannot assume that Ov would tell them if the Claimant resigned. It is just as likely that, as an employee with HR responsibilities, Ov would have kept the Claimant's resignation confidential from her co-workers and supervisors until after her employment had ended.

[82] The Commission argues that the Claimant's resignation was accepted because there was "no evidence that it was refused." It argues that Ov's request that the Claimant email the employer to confirm her resignation is evidence that it was accepted. It also argues that it is significant that Ov detailed her conversation with the Claimant on the following day.

[83] When it comes to whether a claimant has voluntarily left their employment, it is the Commission that has the burden of proof. Without a legal presumption that the acceptance of a resignation may be presumed from the absence of a refusal, "no evidence" of refusal does not advance the Commission's position.

[84] And I am not persuaded by the other evidence to which the Commission refers. I accept that Ov, the employer's on-site HR representative, documented her conversation with the Claimant. I agree that she noted that the Claimant expressed her intention to resign and further noted that she instructed the Claimant to send an email to the employer to confirm. However, this does not suggest to me that Ov was accepting the resignation on behalf of the employer. It suggests only that she was documenting the Claimant's concerns and intentions. One might expect her to do this as an HR representative, even if she did not have the authority to accept the resignation, and even if she were not accepting the resignation at that time.

[85] There is no legal presumption that an employer has accepted a claimant's resignation where it has not expressly rejected the resignation. I have reviewed the Umpire authorities to which the Commission refers.²⁶ In some of those Umpire decisions, the claimant's resignation was actually accepted before the claimant could

²⁶ The "Umpire" was the final level of appeal in a previous administrative appeal scheme for employment insurance matters. Umpire decisions are not binding on the Appeal Division.

withdraw it.²⁷ Other Umpire decisions clearly state that a claimant's resignation must be both tendered **and accepted**.²⁸

[86] I acknowledge that an Umpire reached a different conclusion in one of the referenced decisions.²⁹ The Umpire in CUB 22680 found that a resignation was effective even though it was not formally accepted. The Umpire relied on evidence that the employer had not refused the claimant's resignation.

[87] Even if I were to accept the reasoning in CUB 22680, there is another decision of the former Umpire that I would apply to the present circumstances. In the facts of CUB 27487, an employer had demanded that the claimant put their resignation in writing, but the claimant did not do so. The Umpire found that the employer had not accepted the resignation because the condition (the written resignation) was not fulfilled.³⁰

[88] Here, there is little evidence on which I could find that Ov, or the employer, accepted the resignation before it was withdrawn. In addition, Ov asked the Claimant to email her resignation to the employer, which she did not do.

[89] I am not required to follow Umpire decisions, but I am persuaded by those decisions that say that the employer must accept a claimant's resignation before it is retracted. I also accept that such "acceptance" cannot be implied by the absence of a refusal, where the employer requires the claimant to submit their resignation in writing and the claimant does not do so.

– Findings

[90] My findings are as follows:

- The Claimant verbally resigned on March 25, 2024, but her resignation was not expressly accepted by Ov or the employer. Instead, Ov asked for written

²⁷ See CUB 25359A, 50894, and arguably 69208.

²⁸ See CUB decisions 74406 and 26595.

²⁹ See AD7-2, footnote 15: CUB 22680.

³⁰ See CUB decision 27487.

confirmation, which the Claimant did not provide. I find that Ov did not accept the Claimant's resignation on behalf of the employer.

- The Claimant continued with her work and sought to retract her resignation by March 27, or March 28, 2024. Ov responded to the Claimant's emailed retraction of her resignation, indicating that she was accepting the retraction. I find that Ov was acting on behalf of the employer and that the employer accepted the Claimant's retraction.
- The Claimant continued to work and be paid, and only left her remote worksite when she was scheduled to rotate out on April 3, 2024. The Claimant did not know that the employer was treating her as having quit her job until sometime between April 3 and April 7, 2024.

– **When the Claimant left her employment, did she leave voluntarily?**

[91] Given the findings above, the question is not whether the Claimant had a choice to stay or to go when she first told Ov she wanted to resign. The question is whether she had a choice **at the time that she understood the employer no longer considered her an employee.**

[92] The Claimant tried to make travel arrangements to return to her worksite for the rotation that was supposed to start April 17, 2024, but she found that she was locked out of her employee account. On April 7, she contacted Hth at the employer's HR, who told her that she was not an employee because she had resigned. The employer had already issued a Record of Employment on April 5, 2024, saying that she quit.

[93] I accept that the Claimant did not have a choice to stay or to go at the time she learned that the employer was treating her as though she had quit.

[94] The employer may have had its own reasons for ultimately disregarding the Claimant's withdrawal of her resignation, and taking the position that she had quit. The Claimant had ongoing conflict with at least one of her supervisors, which she referred to as a "toxic history." The employer described it as a "conflict of personalities," and had

apparently put the Claimant on notice that she would have to “get back on track.”³¹ Even after the Claimant reconsidered and retracted her resignation, she remained resistant to her supervisor’s decision to change her shift.

[95] However, I do not need to determine why the employer acted as it did, or whether it was justified. I only need to decide if the Claimant voluntarily left her employment.

[96] The Commission has not satisfied me that it is more likely than not that the Claimant chose to leave her employment. The Claimant withdrew her resignation before it was accepted, so she did not leave her employment on March 25, 2024. She left her worksite on April 3 at the end of her rotation when she was scheduled to leave. But she expected to return to work after her scheduled time off. She was not allowed to return. At some point after she left the worksite, she learned that the employer was treating the employment relationship as at an end.

[97] The Claimant did not voluntarily leave her employment.

Did the Claimant have just cause for leaving?

[98] Because I have found that the Claimant did not leave her job voluntarily, I do not need to find whether she had just cause for leaving.

Conclusion

[99] I am allowing the appeal. The Claimant did not voluntarily leave her employment. She is not disqualified from receiving benefits for this reason.

Stephen Bergen
Member, Appeal Division

³¹ See GD3-35.