



Citation: *VH v Canada Employment Insurance Commission*, 2025 SST 106

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: V. H.

Respondent: Canada Employment Insurance Commission
Representative: Jonathan Dent

Decision under appeal: General Division decision dated February 23, 2024
(GE-23-2721)

Tribunal member: Melanie Petrunia

Type of hearing: In person

Hearing date: December 4, 2024

Hearing participants: Appellant
Respondent's representative

Decision date: February 10, 2025

File number: AD-24-225

Decision

[1] The appeal is allowed. The General Division based its decision on an important factual error. I am returning the matter to the General Division for a new hearing.

Overview

[2] The Appellant, V. H. (Claimant) began a new job as a dietary aide. During her training, she felt that the job duties and hours were different from what she was told at the time she was hired, and she quit.

[3] The Claimant applied for Employment Insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant voluntarily left her job without just cause so she could not be paid benefits.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division found that the Claimant had reasonable alternatives to leaving her job when she did, so she was disqualified from receiving benefits.

[5] The Claimant has appealed the General Division decision to the Tribunal's Appeal Division. She argues that the General Division based its decision on an important factual error. The Commission agrees that the General Division made an error but says that it doesn't change the outcome.

[6] I am allowing the appeal and returning the matter to the General Division for a new hearing.

Issues

[7] The issues in this appeal are:

- a) Did the General Division fail to consider relevant evidence concerning the Claimant's other employment when deciding whether she had reasonable alternatives to leaving?

b) If so, how should the error be fixed?

Analysis

[8] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:¹

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

– The General Division decision

[9] The Claimant started a new job as a Casual Food Services Worker at a care facility on April 25, 2023.² She went to the first day of training and found that the job duties were not what she had expected based on the advertisement and interview. The hours that she would be expected to work were also different than she had understood at the time that she was hired. The Claimant quit after the second day of training.³

[10] In its decision, the General Division reviewed the legal test and applicable case law. It found that there was no dispute that the Claimant voluntarily left her job. It explained that it is up to the Claimant to prove that she had just cause, meaning that it was more likely than not that the only reasonable option was to quit.⁴

[11] The General Division then reviewed the circumstances that existed at the time that the Claimant chose to leave her job. It found that the job duties and hours were

¹ The relevant errors, formally known as “grounds of appeal,” are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

² GD3-34

³ General Division decision at para 26.

⁴ General Division decision at para 25.

different from what the Claimant had been told when she was hired.⁵ It also found that the work environment was toxic and that the Claimant could not physically perform some of the job duties.⁶

[12] The General Division then considered whether the Claimant had reasonable alternatives to leaving. The Commission had argued that the Claimant could have spoken with her supervisor about the job duties or looked for other work before she quit.⁷

[13] The General Division found that a reasonable alternative for the Claimant was to speak with the person who hired her before she left her employment. This person may have been able to accommodate the Appellant's physical limitations and schedule.⁸ The General Division found that the Claimant did not have just cause for leaving and was disqualified from receiving benefits.

– **The General Division failed to consider relevant evidence**

[14] At the hearing before the General Division, the Claimant stated that she had previously been working for three years with Z (Z), and part-time with Y doing overnight shifts in detention.⁹ She said that she was still working for Y, that she was doing two jobs so she didn't need the one at the nursing home.

[15] Later in the hearing, the Claimant was asked about the Commission's argument that a reasonable alternative would have been to continuing working while she looked for another job. She said that this was not an alternative because she had other work and had been working the whole time for the Y. The job at the nursing home was something she was going to do on a casual basis while continuing that other job.¹⁰

[16] The General Division member did not ask the Claimant about this other job and there is no mention of it in the Commission's record. The General Division member did

⁵ General Division decision at paras 38 and 43.

⁶ General Division decision at para 47.

⁷ GD4

⁸ General Division decision at para 58.

⁹ Recording of General Division hearing at 13:10.

¹⁰ Recording of General Division hearing starting at 41:30.

not discuss the Claimant's other employment in its decision, only referring to the Claimant's argument that looking for other work was not a reasonable alternative.¹¹

[17] I find that this information was relevant and important to the decision and should have been addressed by the General Division. If the General Division considered it irrelevant, it should have explained why. I find that, by ignoring this evidence, the General Division based its decision on an important mistake about the facts.

Remedy

[18] The General Division made a reviewable error. This means that I can substitute my own decision, or I can refer the matter back to the General Division for reconsideration.¹² I can decide any question of law or fact that is needed to resolve the Claimant's appeal.¹³

[19] The Commission agrees that the General Division made an error of fact. It says that the proper remedy is to make the decision that the General Division should have made. The Commission argues that the Claimant had concurrent casual employment, based on her testimony at the General Division, but that this casual employment does not affect the reasonable alternatives that were available to her. The Commission argues that the appeal should be dismissed.¹⁴

[20] The Claimant also says that I should make the decision that the General Division should have made and allow the appeal. She says that she had no reasonable alternatives and should be entitled to benefits.

[21] I appreciate that the parties would like me to make the decision in this case, however, I find that the record is not complete. The Commission says that the Claimant had casual concurrent employment based on her testimony. The Claimant referred

¹¹ General Division decision at para 51.

¹² Section 59(1) of the DESD Act sets out my powers to fix an error.

¹³ See section 64(1) of the DESD Act.

¹⁴ AD4-5

twice in the hearing to having another job with Y, and that she was working the whole time.

[22] The Claimant did not provide any details about this employment and was not asked about it by the General Division member, or by the Commission during the reconsideration process. In her application for leave to appeal, the Claimant said that she took shifts with Y and, when her contract with the Z ended, she accepted more on-call shifts and sought more employment with Y. Without additional detail about this job, I can't conclude that it was casual.

[23] I have found that the Claimant's other concurrent employment was relevant. The Claimant has not had an opportunity to provide evidence concerning this employment. At the Appeal Division, I am unable to accept new evidence or testimony from the Claimant about her position with Y. For this reason, I find that the record is not complete and the matter must be returned to the General Division for reconsideration.

Conclusion

[24] The appeal is allowed. The General Division based its decision on an important mistake about the facts. I am returning the matter to the General Division for a new hearing.

Melanie Petrunia
Member, Appeal Division