



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. S. v. Canada Employment Insurance Commission*, 2016 SSTADEI 471

Tribunal File Number: AD-16-562

BETWEEN:

**S. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

HEARD ON: September 6, 2016

DATE OF DECISION: September 12, 2016

## **REASONS AND DECISION**

### **DECISION**

[1] The appeal is allowed in part and the decision of the General Division dated March 18, 2016, is set aside only on the issue of availability.

### **INTRODUCTION**

[2] On March 18, 2016, the General Division concluded that:

- A disentitlement was to be imposed pursuant to subsection 18 (a) and subsection 37 (b) of the *Employment Insurance Act (Act)* and section 55 of the *Employment Insurance Regulations (Regulations)* because the Appellant was out of Canada.

[3] The Appellant requested leave to appeal to the Appeal Division on April 14, 2016. Leave to appeal was granted on April 22, 2016.

### **TYPE OF HEARING**

[4] The Tribunal held a teleconference hearing for the following reasons:

- The complexity of the issue(s) under appeal.
- The fact that the credibility of the parties is not anticipated being a prevailing issue.
- The information in the file, including the need for additional information.
- The requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[5] At the hearing, the Appellant was present and the Respondent was represented by Louise Laviolette.

## **THE LAW**

[6] Subsection 58(1) of the *Department of Employment and Social Development Act*

(*DESD Act*) states that the only grounds of appeal are the following:

- a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

## **ISSUES**

[7] The Tribunal must decide if the General Division erred when it concluded that a disentitlement was to be imposed pursuant to subsection 18 (a) and subsection 37 (b) of the *Act* and section 55 of the *Regulations* because the Appellant was out of Canada.

## **ARGUMENTS**

[8] The Appellant submits the following arguments in support of the appeal:

- The General Division made errors in its decision regarding important dates and did not consider, in view of the facts before it, all of the exceptions in section 55 of the *Regulations*;
- He was actively searching for a job during that period and was available to work on short notice even though he was out of Canada.

[9] The Respondent submits the following arguments against the appeal:

- Subsection 37(b) of the *Act* states that except as may otherwise be prescribed, a claimant is not entitled to receive benefits for any period during which the

claimant is not in Canada. Paragraph 55(1)(d) of the *Regulations* provides that subject to section 18 of the *Act*, a claimant is not disentitled from receiving benefits for the reason that the claimant is outside Canada for a period of not more than seven consecutive days to visit a member of the claimant's immediate family who is seriously ill or injured;

- Although the Respondent accepts that the Appellant was available and seeking work during his absence from Canada, the Respondent contends that he is not entitled to an additional exception from disqualification under paragraph 55(1)(f) of the *Regulations* which allows for a period of not more than 14 consecutive days to conduct a *bona fide* job search. While the Appellant may have been conducting a job search during his absence from Canada, the evidence is consistent from the Appellant that the reason he was outside Canada was to visit his ailing father;
- Furthermore, subsection 55(1.1) of the *Regulations* states that only the periods set out in paragraphs 1(b) and (d) may be cumulated during a single trip outside Canada;
- That notwithstanding the allowance of seven days provided under paragraph 55(1)(d) of the *Regulations*, the Appellant is not entitled to benefits during the period in question, pursuant to subsection 37(b) of the *Act*.

## **STANDARD OF REVIEW**

[10] The Appellant did not make any representations regarding the applicable standard of review.

[11] The Respondent submits that the applicable standard of review for questions of fact and law is reasonableness and is correctness for questions of law - *Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[12] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (AG) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that “[w]hen it acts as an

administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court”.

[13] The Federal Court of Appeal further indicated that:

“[n]ot only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of "federal boards", for the Federal Court and the Federal Court of Appeal.”

[14] The Court concluded that “[w]he[n] it hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that *Act*”.

[15] The mandate of the Appeal Division of the Social Security Tribunal as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (AG)*, 2015 FCA 274.

[16] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

## **ANALYSIS**

[17] In appeal, the Respondent wishes to concede on the issue of disentitlement for non-availability pursuant to paragraph 18(1)(a) of the *Act*.

[18] The Respondent contends that the Appellant has proven his availability for work within the meaning of the *Act* and jurisprudence during his entire absence from Canada. The Tribunal agrees and accepts this concession of the Respondent on the issue of availability considering the facts of the present case – *Canada (AG) v. Elyoumni*, 2013 FCA 151.

[19] Therefore, the only issue remaining before the Tribunal is the issue of disentitlement for being outside of Canada.

[20] There is no dispute that the Appellant was outside of Canada from January 29, 2015 to September 26, 2015.

[21] He stated on numerous occasions that he was in India to help his ailing father who had suffered a paralysis attack in January 2015 and a stroke in August 2015. He did not seek work or go for a job interview in India, but was using his time away to seek for jobs in Canada, because he had access to the internet. The evidence before the General Division demonstrates clearly that the Appellant was not outside of Canada primarily for the purpose of attending a job interview and/or conducting a job search.

[22] A claimant is subject to a disentitlement under subsection 37(b) of the *Act* while outside of Canada unless he meets one of the exceptions under subsection 55(1) of the *Regulations*.

[23] In the present case, the General Division determined that other than the seven-day period that was allotted by the Respondent pursuant to paragraph 55(1)(d) of the *Regulations* for visiting his ailing father, the Appellant was not entitled to receive benefits during the period in question since he did not meet any other exceptions of subsection 55(1) of the *Regulations*.

[24] The Tribunal finds that the decision of the General Division on the issue of outside of Canada was based on the evidence before it and that it complies with the law and the decided cases.

## **CONCLUSION**

[25] The appeal is allowed in part and the decision of the General Division dated March 18, 2016, is set aside only on the issue of availability.

*Pierre Lafontaine*  
Member, Appeal Division