



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *W. G. v. Canada Employment Insurance Commission*, 2016 SSTADEI 484

Tribunal File Number: AD-16-547

BETWEEN:

**W. G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Mark Borer

DATE OF DECISION: September 20, 2016

## **DECISION**

[1] On consent, the appeal is allowed. The matter will be returned to the General Division for reconsideration.

## **INTRODUCTION**

[2] Previously, a member of the General Division determined that the Appellant's appeal should be dismissed. In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

## **THE LAW**

[3] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (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.

## **ANALYSIS**

[4] This appeal concerns whether or not the Appellant was available while attending school.

[5] The Appellant argues that she had a history of working while at school, and that the General Division member erred by not considering this.

[6] The Commission, having considered the file and the decision, admits that the member erred in the manner alleged. They note that the Appellant informed the General

Division member that she had worked while at school in the past, and that while it was open to the member to reject this evidence (as the Commission did initially) the failure to address it is a reviewable error. They ask that the matter be returned to the General Division for a new hearing.

[7] I agree with the parties that the situation is as they have described. This decision cannot stand.

### **CONCLUSION**

[8] On consent and for the above reasons, the appeal is allowed. The matter is returned to the General Division for reconsideration.

*Mark Borer*  
Member, Appeal Division