



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. P. v. Canada Employment Insurance Commission*, 2017 SSTADEI 228

Tribunal File Number: AD-17-255

BETWEEN:

J. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 12, 2017

REASONS AND DECISION

DECISION

[1] The appeal is allowed.

INTRODUCTION

[2] On February 21, 2017, the General Division determined that the Appellant had not proven her availability for work pursuant to paragraph 18(1)(b) of the *Employment Insurance Act* (Act).

[3] On March 23, 2017, the Appellant filed an application for leave to appeal with the Appeal Division. On May 9, 2017, the application for leave to appeal was granted.

ISSUE

[4] The Tribunal must decide whether the General Division committed an error by concluding that the Appellant had not proven her availability for work pursuant to paragraph 18(1)(b) of the Act.

THE LAW

[5] In accordance with subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), 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.

ANALYSIS

[6] The Appellant is appealing the General Division's decision and advancing grounds (b) and (c) of subsection 58(1) of the DESD Act. The Appellant argues that she was ready to resume her employment after her period of sickness. During her disruption of employment, the Applicant was, if not for her illness, "otherwise available" for her employer, and she was therefore entitled to benefits.

[7] The Respondent argues that she led the General Division in error in her way of arguing her case; on the other side, she believes that the decision rendered does not comply with the Act.

[8] The Respondent argues that, under paragraph 18(1)(b) of the Act, the Appellant was entitled to receive sickness benefits during the period of time at issue because, if she had not been sick, she would have continued working for her usual employer and according to her normal work schedule. Pursuant to subsection 52(1) of the Act, the Respondent may reconsider any claim for benefits that have already been paid to a claimant. In this way, the Respondent has the discretionary authority and, under its policy, it argues that it did not exercise its discretionary power judiciously when it rendered a retroactive decision in the Appellant's docket. As a result, the Respondent wishes to concede the appeal.

[9] Given the arguments in support of the Appellant's appeal and the Respondent's position on appeal, and after reviewing the docket and the General Division's decision, the Tribunal agrees that the appeal should be allowed.

CONCLUSION

[10] The Tribunal allows the appeal.

Pierre Lafontaine

Member, Appeal Division