



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. D. v Canada Employment Insurance Commission*, 2018 SST 284

Tribunal File Number: AD-18-52

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**A. D.**

Respondent

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

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Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: March 26, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The application for leave to appeal (Application) is granted.

### **OVERVIEW**

[2] The Respondent, A. D. (Claimant), seeks Employment Insurance benefits. She maintains that after she was laid off, she wanted to be recalled to her position and was, therefore, available for work.

[3] The Applicant, the Canada Employment Insurance Commission (Commission), disentitled the Claimant from receiving benefits because it found that the Claimant had failed to prove that she was capable of and available for work, since she had not looked for work and was waiting to be recalled by only one employer.

[4] To qualify for Employment Insurance benefits, the Claimant had to establish that she was capable of and available for work and unable to obtain suitable employment.

[5] The General Division of the Social Security Tribunal of Canada found that it was an error of law for the Commission not to give the Claimant notice and a reasonable period of time to find employment. Further, it found that the Claimant had demonstrated that she was available for work and had a desire to return to the workforce.

[6] The Commission filed the Application with the Appeal Division and submitted that the General Division had based its decision on errors of law and serious errors in its findings of fact.

[7] I find that the appeal has a reasonable chance of success, because the General Division did not specify what case law it was applying when relying on jurisprudence that it held to be applicable.

### **ISSUE**

[8] Is there an argument that the General Division erred in law in making its decision by relying on inapplicable jurisprudence?

## ANALYSIS

[9] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.<sup>1</sup>

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?<sup>2</sup>

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error.<sup>4</sup> The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

[12] Although the Commission has submitted numerous grounds of appeal (errors of law and serious errors in its findings of fact) and provided arguments on each, the Appeal Division need not address all the grounds of appeal raised. Where individual grounds of appeal are interrelated, it may be impracticable to parse the grounds. One arguable ground of appeal may suffice to justify granting leave to appeal.<sup>5</sup> Therefore, I will address one possible error—not every alleged error—that warrants further review.

### **Is there an argument that the General Division erred in law in making its decision by relying on inapplicable jurisprudence?**

[13] The General Division found that “it has been held that a claimant on a temporary lay-off should not be immediately or in this case retroactively be disentitled to benefits,”<sup>6</sup> the “case law is consistent in holding that when a person is subject to recall, the person must be granted a

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<sup>1</sup> *Department of Employment and Social Development Act* (DESD Act) at subsections 56(1) and 58(3).

<sup>2</sup> *Osaj v. Canada (Attorney General)*, 2016 FC 115, at paragraph 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at paragraph 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at paragraph 22.

<sup>3</sup> DESD Act at subsection 58(1).

<sup>4</sup> DESD Act at subsection 58(2).

<sup>5</sup> *Mette v. Canada (Attorney General)*, 2016 FCA 276.

<sup>6</sup> General Division decision at paragraph 49.

reasonable amount of time before he or she is deprived of unemployment insurance benefits,”<sup>7</sup> and “other jurisprudence has required that claimants should receive a warning when restricting their job search for too much or too long.”<sup>8</sup>

[14] However, the General Division did not state what case law and jurisprudence stood for those principles. Without specific reference, it is difficult to determine whether the General Division correctly interpreted and applied binding jurisprudence.

[15] I also note that the General Division cited a Canadian Umpire Benefit (CUB) decision and relied on it to “suggest” a legal principle.<sup>9</sup> While CUB decisions may be persuasive, they are not binding on the Tribunal. Federal Court and Federal Court of Appeal jurisprudence, on the other hand, is binding.

[16] Basing a decision on unspecified case law without a meaningful analysis is problematic. For this reason alone, this matter warrants further review.

[17] I am satisfied that the appeal has a reasonable chance of success.

## **CONCLUSION**

[18] The Application is granted.

[19] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[20] I invite the parties to make written submissions on whether a hearing is appropriate and, if so, the form of the hearing and, also, on the merits of the appeal.

Shu-Tai Cheng  
Member, Appeal Division

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<sup>7</sup> *Ibid.* at paragraph 53.

<sup>8</sup> *Ibid.* at paragraph 54.

<sup>9</sup> *Ibid.* at paragraph 41.