



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. N. R.*, 2018 SST 600

Tribunal File Number: AD-18-260

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

N. R.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: May 17, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Respondent, N. R., worked as a yard supervisor at Canada Post Corporation until January 27, 2017. He left that employment primarily because of health reasons and for self-employment opportunities. He subsequently applied for regular Employment Insurance benefits.

[3] However, the Applicant, the Canada Employment Insurance Commission (Commission), denied the Respondent's claim for Employment Insurance benefits and imposed a disqualification because it determined that the Respondent had had reasonable alternatives to leaving his employment with Canada Post Corporation, having regard to all the circumstances, and that he therefore did not have just cause for voluntarily leaving. The Commission also determined that the Respondent was self-employed and therefore could not be considered unemployed, and that he was disentitled to Employment Insurance benefits.¹

[4] The Respondent appealed the Commission's reconsideration decision to the Social Security Tribunal's General Division, but it dismissed his appeal, having found that he did not have just cause for voluntarily leaving his employment in January 2017, having regard to all the circumstances. The General Division found that a disqualification from Employment Insurance benefits was warranted under ss. 29 and 30 of the *Employment Insurance Act*.

[5] The Commission appeals the General Division's decision, arguing that it had refused to exercise its jurisdiction, erred in law and 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, by failing to consider whether the Respondent was also disentitled to Employment Insurance benefits. I must determine whether the Commission has an arguable case, i.e. whether there is a reasonable chance of success on any of these grounds.

¹ The Commission's initial decision, dated April 21, 2017, also appears to contain a disentitlement for availability, but the reconsideration decision omits this third issue (GD3-33).

[6] I find that the appeal has a reasonable chance of success because the General Division may have erred when it did not consider one of the issues before it, namely, whether the Respondent was also disentitled to Employment Insurance benefits.

ISSUES

[7] The Commission argues that I should address the following issues:

- (a) whether there is an arguable case that the General Division refused to exercise its jurisdiction when it did not decide whether the Respondent was disentitled to Employment Insurance benefits;
- (b) whether there is an arguable case that the General Division erred in law in determining that it was unnecessary to decide whether the Respondent was disentitled to Employment Insurance benefits and
- (c) whether there is an arguable case that 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

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to 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.

[9] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under ss. 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey*.²

Is there an arguable case that the General Division refused to exercise its jurisdiction?

[10] The Commission submits that there were two separate issues before the General Division, including whether the Respondent was disentitled to Employment Insurance benefits for failing to prove he was unemployed. The Commission claims that the General Division did not fully address this particular issue and that it therefore erroneously refused to exercise its jurisdiction.

[11] In its reconsideration letter,³ the Commission considered two issues: the first was connected to the Respondent's employment with Canada Post Corporation and the second was connected to the Respondent's self-employment. In his notice of appeal, the Respondent referred to his current status and confirmed that he did not have clients from his self-employment. As he did not have any clients at the time, he considered himself unemployed and envisioned that he would be receiving Employment Insurance benefits. It is clear that the Respondent's self-employment was a live issue before the General Division.

[12] However, the General Division held that, because it found that the Respondent was disqualified from Employment Insurance benefits following his departure from Canada Post Corporation, it became unnecessary to consider whether the Respondent was unemployed for the purposes of the *Employment Insurance Act*.

[13] The Commission argues that the General Division erred in determining that the entitlement issue became moot, and maintains that the General Division was required to consider and render a decision on the issue. The Commission asserts that the Respondent failed to prove that he was unemployed in accordance with ss. 9 and 11 of the *Employment Insurance Act* and the General Division therefore should have confirmed the Commission's decision that the Respondent was disentitled to Employment Insurance benefits. I am satisfied that there is an arguable case under s. 58(1)(a) that, despite the fact that the Respondent was disqualified from Employment Insurance benefits after leaving his employment with Canada Post Corporation, the

² *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

³ Reconsideration letter, dated August 9, 2017, at page GD2-7.

General Division was still required to assess and determine whether the Respondent was also disentitled from benefits after March 26, 2017, as this related to his self-employment rather than to his employment with Canada Post Corporation.

[14] As I have granted leave to appeal, it is unnecessary for me to address any other alleged errors.⁴

CONCLUSION

[15] The application for leave to appeal is granted. This decision granting leave to appeal does not in any way prejudge the result of the appeal on the merits of the case.

[16] In accordance with s. 58(5) of the DESDA, the application for leave to appeal becomes the notice of appeal. Within 45 days after the date of this decision, the parties may either file submissions or file a notice with the Appeal Division stating that they have no submissions to file. The parties may also make submissions regarding the appropriate form of hearing.

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	Rachel Paquette, for the Applicant
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⁴ *Mette v. Canada (Attorney General)*, 2016 FCA 276.