



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. B. v. Canada Employment Insurance Commission*, 2018 SST 556

Tribunal File Number: AD-17-550

BETWEEN:

R. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 22, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, R. B. (Claimant), made an initial application for Employment Insurance benefits. Upon review of the application, the Respondent, the Canada Employment Insurance Commission, notified the Claimant that contrary to what he had indicated, he was self-employed and operating a business. He could not, therefore, receive benefits as of June 28, 2015. The Commission also imposed a penalty on him. The Claimant requested a reconsideration of that decision. The Commission informed him that it would modify its initial decision in order to remove the penalty. The Claimant appealed the decision to the General Division.

[3] The General Division determined that from June 28, 2015, to June 19, 2016, the Claimant's involvement in his company was not minor in extent and that these activities could be considered his main source of income. The General Division found that the disentitlement of benefits imposed on the Claimant from June 28, 2015, to June 19, 2016, under ss. 9 and 11 of the *Employment Insurance Act* and s. 30 of the *Employment Insurance Regulations* was justified.

[4] The Tribunal granted leave to appeal. The Claimant argues that he was effectively unemployed as of June 23, 2015. He complains that the General Division did not account for his availability and his efforts to find a job as of June 2015, when he was not collecting business income during the relevant period.

[5] The Tribunal must decide whether the General Division erred by not taking into account the Claimant's availability to work and his efforts to find work.

[6] The Tribunal dismisses the Claimant's appeal.

ANALYSIS

Appeal Division's Mandate

[7] The Federal Court of Appeal has determined that the mandate of the Appeal Division is conferred to it by ss. 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).¹

[8] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

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

ISSUE

[10] **Did the General err by not taking into account the Claimant's availability to work and his efforts to find work?**

[11] In its examination of the evidence before it, the General Division found that from June 28, 2015, to June 19, 2016, the Claimant primarily searched for drone piloting contracts.

[12] The Tribunal notes that the Claimant admitted on several occasions that the business's operations really began in April 2015.²

[13] The Claimant stated that he had given his first pilot training program in June 2015.³ He completed three certification programs in June 2015. He also signed a contract with X X Flying School in July 2015.⁴

¹ *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

² GD3-28, GD3-36, and GD3-60.

[14] From June to September 2015, the Claimant provided aerial photography and videography for several clients.⁵

[15] The Tribunal finds that, considering all the evidence, the General Division did not err by finding that during the period in question, the Claimant concentrated on searching for drone piloting contracts for his company and that he did not show an intention and willingness to seek and immediately accept a new job.

[16] After evaluating all six criteria, the General Division rightfully concluded that the time that the Claimant dedicated to the company's various activities was not so minor in extent and that these activities could be considered his primary source of income during this benefit period. He was not, therefore, unemployed from June 28, 2015, to June 19, 2016.

[17] The Tribunal therefore finds that the General Division considered the Claimant's arguments, that its decision rests on the evidence submitted before it, and that this decision complies with the legislation provisions and with the jurisprudence.

[18] For the above-mentioned reasons, it is appropriate to dismiss the appeal.

³ GD3-27.

⁴ GD3-28.

⁵ GD3-37, GD3-79, GD3-80, and GD3-81.

CONCLUSION

[19] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 17, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. B., Appellant Manon Richardson, Respondent's representative