Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *G. B. v. Canada Employment Insurance Commission*, 2018 SST 674

Tribunal File Number: AD-17-816

BETWEEN:

G. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 14, 2018

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal in part, only on the issue of the notice of violation.

OVERVIEW

[2] The Appellant, G. B. (Claimant), made an initial application for Employment Insurance benefits. On review of the application, the Respondent, the Canada Employment Insurance Commission (Commission), informed her that she was excluded from receiving benefits because she voluntarily left her employment without just cause. The Commission also imposed a penalty on the Claimant and issued a notice of violation for having knowingly made false or misleading statements. The Commission informed the Claimant that it was maintaining its initial decision. The Claimant appealed the decision to the General Division.

[3] The General Division found that the Claimant had no other reasonable alternative to leaving her employment at the time that she did in order to give priority to the training she was referred to by the Commission or its designated authority. The General Division did not accept the Claimant's argument that she filled out her reports according to Emploi-Québec's instructions and maintained the imposition of a penalty. However, it reduced the amount of the penalty in light of its findings on the issue of voluntary leaving and maintained the notice of violation.

[4] The Tribunal granted leave to appeal. The Claimant argues that, because the appeal of the main issue—voluntary leaving—was allowed, the General Division could not find that she had acted knowingly. The General Division therefore erred by upholding the penalty and by failing to set aside the notice of violation issued by the Commission.

[5] The Tribunal must determine whether the General Division erred by upholding the penalty and the notice of violation following its findings on the issue of voluntary leaving.

[6] The Tribunal allows the Claimant's appeal in part, only on the issue of the notice of violation.

ISSUE

Did the General Division err by upholding the penalty and the notice of violation following its findings on the issue of voluntary leaving?

ANALYSIS

The Appeal Division's mandate

[7] The Federal Court of Appeal has determined that the Appeal Division has no other mandate than the one conferred to it by ss. 55 to 69 of the *Department of Employment and Social Development 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: Did the General Division err by upholding the penalty and notice of violation following its findings on the issue of voluntary leaving?

[10] In this case, the General Division had to decide whether the Claimant had voluntarily left her employment and whether a penalty and notice of violation should be imposed.

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

[11] The General Division found that the Claimant was justified in voluntarily leaving her employment within the meaning of sections 29 and 30 of the *Employment Insurance Act* (EI Act). That decision is not under appeal.

[12] The Claimant argues that, because the appeal of the main issue—voluntary leaving—was allowed, the General Division could not find she acted knowingly. Therefore, the General Division erred by upholding the penalty and by failing to set aside the notice of violation issued by the Commission.

[13] According to the Respondent, the fact that the overpayment was nullified with General Division's decision on the issue of voluntary leaving does not change the fact that the Claimant made a false statement by answering no to the simple question of whether she had left a job during the period covered by her report.

[14] The only requirement of Parliament to impose a penalty is that of knowingly—that is, while in full possession of the facts—making a false or misleading statement. The absence of the intent to defraud is of no relevance.[2]

[15] After considering the evidence and the Claimant's testimony, the General Division found that she had knowingly made a false or misleading statement by not declaring that she had stopped working for an employer in her January 24 to February 6, 2016, report.

[16] The Federal Court of Appeal held that there is a reversal of the burden of proof as soon as a claimant gives a wrong answer to a simple question or to questions on a report card.[3] In this particular case, the question she had to answer was simple: [translation] "Did you stop working for an employer during the period covered by this report?"

[17] Therefore, the onus was on the Claimant to explain why incorrect answers were given. She had to prove that she was unaware that her answers were incorrect.

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[2] *Canada (Attorney General) v. Bellil*, 2017 FCA 104.
[3] *Canada (Attorney General) v. Gates*, 1995 and *Canada (Attorney General) v. Purcell*, 1995 CanLII 3558,

[18] As noted by the Federal Court of Appeal, the subjective knowledge test takes into account objective factors.

[19] Before beginning each report, the Claimant received a warning about false or misleading statements, and she confirmed having read and understood the section on her rights and responsibilities. Furthermore, the Claimant confirmed that the answers provided in her statements were correct at the end of each report that she completed for each week of unemployment.

[20] The Claimant stated that she had not stopped working for an employer in her report for January 24 to February 6, 2016, even though the evidence shows that she had stopped working for an employer on January 31, 2016.

[21] The fact that the General Division considered the voluntary leaving justified within the meaning of the EI Act does not change the fact that the Claimant made a false statement by failing to disclose that she had stopped working for an employer.

[22] According to the Claimant, she filled out her reports according to instructions received from Emploi-Québec. These instructions asked her to answer certain questions in a specific way to avoid [translation] “blocking” the system.

[23] Based on the decision, the General Division clearly did not find the Appellant’s version trustworthy and credible. Based on the evidence, the General Division determined that the Claimant has left her employment just a few days before filling in the report. Furthermore, the General Division found it unlikely that an entity like Emploi-Québec advised the Claimant to answer a question about termination of employment that had no connection with her availability and her training program with anything other than the truth. The General Division also rejected the automation theory in light of the simplicity of the question and the warnings she received while submitting the claim.

[24] The Tribunal finds that, given all of the evidence, the General Division did not err in refuting the Claimant’s various explanations or by finding that she had knowingly made a false or misleading statement.

[25] The General Division found that, because it had nullified the overpayment the Claimant had to pay after its decision on the voluntary leaving and because there were extenuating circumstances, there was cause to reduce the amount of the penalty to $250.

[26] It is true that it would have been preferable for the General Division to explain in detail how it arrived at this sum for the penalty given its decision on the voluntary leaving and the absence of an overpayment. Since the EI Act states that the penalty may also be set based on the Claimant's rate of benefits, in this case $524, the Tribunal considers the $250 amount established by the General Division reasonable and in line with the EI Act.

[27] Finally, the Commission informed the Tribunal during the appeal hearing that it was withdrawing the notice of violation imposed on the Claimant in this case.

[28] For the above-mentioned reasons, it is appropriate to allow the appeal in part.

CONCLUSION

[29] The Tribunal allows the Claimant's appeal in part, only on the issue of the notice of violation.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 29, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. B., Appellant Yvan Bousquet, Representative for the Appellant Manon Richardson, Representative for the Respondent