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

[TRANSLATION]

Citation: *P. C. v. Canada Employment Insurance Commission*, 2018 SST 682

Tribunal File Number: AD-17-608

BETWEEN:

P. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 19, 2018

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Applicant, P. C. (Claimant), made an initial claim for Employment Insurance benefits. Upon review of the application, the Respondent, the Canada Employment Insurance Commission (Commission), notified the Claimant that he was no longer eligible for benefits because he decided to pursue a full-time training program and he was not available to work. The Claimant requested reconsideration of this decision. The Commission advised the Claimant that it was upholding its initial decision. The Claimant appealed the decision to the General Division.

[3] The General Division found that the Claimant had not rebutted the presumption that a person registered in a full-time training program is not available to work, because no evidence of exceptional circumstances had been presented before the General Division.

[4] The Tribunal granted leave to appeal. The Claimant submits that he was still available and that he could give up his training program if he got a job.

[5] The Tribunal must determine whether the General Division erred by finding that the Claimant did not rebut the presumption that a person registered in a full-time training program is not available to work.

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

ISSUE

[7] Did the General Division err by finding that the Claimant did not rebut the presumption that a person registered in a full-time training program is not available to work?

ANALYSIS

Appeal Division's Mandate

[8] The Federal Court of Appeal has established that the Appeal Division has no mandate but the one conferred to it by ss. 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).[1]

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

[10] 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 finding that the Claimant did not rebut the presumption that a person registered in a full-time training program is not available to work?

[11] The Claimant submits that he remained available and that he could give up his training program if he got a job. The Claimant argues that he was able to leave the training to work and resume the training where he left off; he had done so twice.

[12] The Claimant submits that he sent his resume to several employers and searched for jobs on various employment websites. He attended a job search workshop with the

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

goal of finding one. He also met with available employers and spoke on the telephone with others, but still had little success. He doubted that Parliament intended to unjustly deprive a worker who met all the criteria under the *Employment Insurance Act* (EI Act) simply because he was undergoing training.

[13] As the General Division emphasized, there being no precise definition in the EI Act, the Federal Court of Appeal has held on many occasions that availability must be determined by analyzing three factors—the desire to return to the labour market as soon as a suitable job is offered, the expression of that desire through efforts to find a suitable job, and not setting personal conditions that might unduly limit the chances of returning to the labour market—and that the three factors must be considered in reaching a conclusion.[2]

[14] Furthermore, availability is assessed for each working day in a benefit period for which the claimant can prove that on that day he or she was capable of and available for work, and unable to obtain suitable employment.[3] Availability must be shown during regular hours for the entire work day and cannot be limited to irregular working hours that are based on the training program's schedule and that place significant limits on availability.[4]

[15] The General Division found that the Claimant, a welder by profession, had not approached employers looking for welders in his region. It noted that the name of the employers suggested by the Commission was not on the list that the Claimant submitted on June 7, 2017. It found that the Claimant, in spite of his claim that he would set aside his metalworking course if he obtained a day job, rather made efforts to find a night job in order to continue his studies. The General Division found that the Claimant had not proven that he had previously worked full-time while taking the course.[5]

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[2] *Faucher v. Canada (Canada Employment and Immigration Commission)*, A-56-96.
[3] *Canada (AG) v. Cloutier*, 2005 FCA 73.
[4] *Bertrand*, A-613-81, *Primard*, A-683-01.
[5] GD 3-15, General Division decision, para. 48.

[16] As the General Division noted, pursuing full-time training creates a strong, but refutable, presumption that the person pursuing the training is not available to work. That presumption may be rebutted by evidence of "exceptional circumstances."[6] The burden of proving the "exceptional circumstances" is on the claimant.

[17] The General Division found that the Claimant had not met his burden of proof in support of his claim that he was available to work in spite of his training.

[18] The Tribunal is not empowered to retry a case or to substitute its discretion for that of the General Division. The Appeal Division's jurisdiction is limited by s. 58(1) of the DESD Act. Unless the General Division failed to observe a principle of natural justice, erred in law, 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.

[19] After reviewing the case and the General Division decision and considering the Claimant's arguments, the Tribunal finds that the General Division correctly applied the Federal Court of Appeal's teachings to the facts of the case. The General Division's decision is based on the evidence brought before it, and its decision is consistent with the legislative provisions and case law.

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

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[6] *Landry v. Canada (Attorney General)*, A-719-91.

CONCLUSION

[21] The Tribunal dismisses the appeal.

Pierre Lafontaine

Member, Appeal Division

HEARD ON:	June 12, 2018
METHOD OF PROCEEDING:	Teleconference
PERSONS IN ATTENDANCE:	P. C., Appellant Richard Benoit, Appellant's representative Manon Richardson, Respondent's representative