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

Citation: *G. M. v. Canada Employment Insurance Commission*, 2018 SST 770

Tribunal File Number: AD-18-22

BETWEEN:

**G. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

# SOCIAL SECURITY TRIBUNAL DECISION
## Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: July 30, 2018

Canada

## DECISION AND REASONS

### DECISION

[1] The Tribunal dismisses the appeal.

### OVERVIEW

[2] The Appellant, G. M. (Claimant), applied for regular Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), disentitled the Claimant from receiving benefits from April 16 to May 13, 2016, and from October 1 to October 21, 2016, after finding that the Claimant was outside of Canada and unavailable for work. The Claimant requested a reconsideration of this decision, and the Commission maintained its decision regarding the absence from Canada but decided in the Claimant's favour regarding the issue of availability. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] The General Division noted that section 37 of the *Employment Insurance Act* (Act) prescribes that no benefits are payable to claimants while they are outside of Canada except as specifically prescribed in section 55 of the *Employment Insurance Regulations* (Regulations). It concluded that the Claimant was outside of Canada on vacation and to check on his property and that these reasons were not exceptions listed in subsection 55(1) of the Regulations. The General Division also concluded that subparagraph 55(6)(*b*)(iv) of the Regulations did not apply to the Claimant.

[4] The Claimant was granted leave to appeal to the Appeal Division. He submits that the General Division erred in its interpretation of subparagraph 55(6)(*b*)(iv) of the Regulations. He argues that the General Division erred in law when it concluded that he did not qualify to receive benefits under Article VI of the *Agreement between Canada and the United States respecting Unemployment Insurance* signed on March 6 and 12, 1942.

[5] The Tribunal must decide whether the General Division erred in law in its interpretation of subparagraph 55(6)(*b*)(iv) of the Regulations.

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

## ISSUE

[7] Did the General Division err in law in its interpretation of subparagraph 55(6)(*b*)(iv) of the Regulations?

## ANALYSIS

### The Appeal Division's mandate

[8] The Federal Court of Appeal has determined that, when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that act.[1]

[9] 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.[2]

[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 made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

## PRELIMINARY MATTERS

[11] The Claimant failed to appear at the hearing. The Tribunal proceeded with the hearing in his absence since it was satisfied that the Claimant had received notice of the hearing, in accordance with section 12 of the *Social Security Tribunal Regulations*.

[12] The Claimant filed a Record of Employment (ROE) dated February 24, 2015, in support of his appeal.

---

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

[13] An appeal to the Appeal Division is not an appeal in which there is a new hearing, where a party can present evidence and hope for a favourable decision. The Appeal Division powers are limited by the DESD Act.

[14] The Tribunal finds that that the evidence existed before the General Division hearing and should have been submitted at that time. Since the Claimant's ROE was not submitted to the General Division, the Tribunal cannot take it into account in this appeal.

**Issue: Did the General Division err in law in its interpretation of subparagraph 55(6)(*b*)(iv) of the Regulations?**

[15] The appeal is dismissed.

[16] The Claimant submits that the General Division erred in its interpretation of subparagraph 55(6)(*b*)(iv) of the Regulations. He argues that the General Division erred in law when it concluded that he did not qualify to receive benefits under Article VI of the *Agreement between Canada and the United States respecting Unemployment Insurance* signed on March 6 and 12, 1942.

[17] Subsection 55(6) of the Regulations states:

> Subject to subsection (7), a claimant who is not a self-employed person and who resides outside Canada, other than a major attachment claimant referred to in subsection (5), is not disentitled from receiving benefits for the sole reason of their residence outside Canada if
>
> […]
>
> (b) the claimant is qualified to receive benefits under Article VI of the *Agreement between Canada and the United States respecting Unemployment Insurance*, signed on March 6 and 12, 1942, and resides temporarily or permanently in one of the following places in respect of which the Commission has not, pursuant to section 16 of the *Employment and Immigration Department and Commission Act*, suspended the application of that Agreement, namely,
>
> (i) the District of Columbia,
>
> (ii) Puerto Rico,
>
> (iii) the Virgin Islands, or

(iv) any state of the United States.

[18] Paragraph 55(6)(*b*) encompasses three requirements: (1) the claimant is qualified to receive benefits under Article VI of the *Agreement between Canada and the United States respecting Unemployment Insurance*; (2) they reside temporarily or permanently in one of the listed places; and (3) the Commission has not suspended the application of the Agreement.

[19] Article VI of the Agreement states the following:

> To avoid the duplication of unemployment insurance payments with respect to the same period of unemployment, the order in which an individual who has benefit rights under the unemployment insurance laws of two or more jurisdictions shall exhaust or otherwise terminate his rights to benefits shall be determined jointly by the Federal agency of the United States of America and the Unemployment Insurance Commission of Canada in such manner as to be reasonable and just as between all affected interests.

[20] As stated by the General Division, in order to qualify to receive benefits under the Agreement between Canada and the United States respecting Unemployment Insurance, a claimant must have benefit rights in both Canada and the United States (“‘jurisdiction’ means any State or Canada” as per Article I of the agreement) for the same period of unemployment, and there must be an agreement between those jurisdictions as to the order in which a claimant will exhaust those benefit rights.

[21] The evidence before the General Division clearly demonstrates that the Claimant did not have benefit rights in both Canada and the United States for the same period of unemployment.

[22] Furthermore, paragraph 55(6)(*b*) requires that the Claimant reside temporarily or permanently in a state of the United States.

[23] Although the term “residence” is not defined in the legislation, according to case law, the term refers to a place in which a claimant has settled and ordinarily resides. The definition of “residence” found in the second edition of *Black’s Law Dictionary* refers to “Living or dwelling in a certain place permanently or for a considerable length of time.”

[24] In his application for benefits, the Claimant indicated that his residential address was in X, Alberta. The Claimant testified before the General Division that his property located in Arizona was a vacation rental property and that he travels there twice a year: in the fall to ensure it is ready for the winter season and in the spring to check again after the season. He stated on two separate questionnaires and for two different time periods that he was going to Arizona for a vacation or for a change of scenery. Based on the evidence, the Claimant was clearly not residing temporarily or permanently in Arizona.

[25] For the above-mentioned reasons, the Tribunal finds that the General Division did not err in law when it concluded that the Claimant did not meet the requirements of subparagraph 55(6)(*b*)(iv) of the Regulations and that it was appropriate for the Commission to impose a disentitlement to benefits under paragraph 37(*b*) of the Act, for the periods of April 16 to May 13, 2016, and October 1 to October 21, 2016.

**CONCLUSION**

[26] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

| | |
|---|---|
| HEARD ON: | July 26, 2018 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCE: | Suzanne Prud'Homme, Representative of the Respondent |