



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v. K. M.*, 2018 SST 744

Tribunal File Number: AD-18-153

BETWEEN:

**Canada Employment Insurance Commission**

Appellant

and

**K. M.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: July 17, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal allows the appeal. The file is returned to the General Division for a new hearing on all issues.

### **OVERVIEW**

[2] The Respondent, K. M. (Claimant), applied for Employment Insurance benefits. The Appellant, the Canada Employment Insurance Commission (Commission), allowed her claim and benefits were paid. The Commission later notified the Claimant that, upon investigation, it had determined that she had voluntarily left her employment without just cause and that, as a result, she had incurred an overpayment and was subject to a penalty. After reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division of the Tribunal.

[3] The General Division found that the Commission had conceded on the issue of voluntary leaving without just cause and allowed the appealed on that issue. Furthermore, the General Division cancelled the penalty following its decision on the issue of voluntary leave.

[4] The Commission was granted leave to appeal to the Appeal Division. The Commission submits that the General Division erred in law by basing its decision on a concession that the Commission did not make. The Commission further submits that the General Division failed to consider all the evidence before it and to base its decision on that evidence, as well as the relevant legislation and jurisprudence.

[5] The Tribunal must decide whether the General Division erred in law by basing its decision on a concession that the Commission did not make and whether the General Division failed to consider the evidence before it.

[6] The Tribunal allows the Commission's appeal.

### **ISSUES**

[7] Did the General Division err in law by basing its decision on a concession that the Commission did not make?

[8] Did the General Division err in law by failing to consider all the evidence before it and to base its decision on that evidence, as well as the relevant legislation and jurisprudence?

## **ANALYSIS**

### **Appeal Division's mandate**

[9] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to s. 58(1) of the *Department of Employment and Social Development Act*, the Appeal Division's mandate is conferred to it by ss. 55 to 69 of that Act.<sup>1</sup>

[10] 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.<sup>2</sup>

[11] 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.

### **Issue 1: Did the General Division err in law by basing its decision on a concession that the Commission did not make?**

[12] The ground of appeal is allowed.

[13] The Tribunal finds that the General Division erred in law when it rendered its decision based on a concession that the Commission did not make.

[14] The Commission's submissions requested only that the General Division send the file back for a decision on the issue of availability, if the General Division allowed the

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<sup>1</sup> *Canada (A.G.) v. Jean*, 2015 FCA 242; *Maunder v. Canada (A.G.)*, 2015 FCA 274 (CanLII).

<sup>2</sup> *Idem*.

Claimant's appeal on the issue of voluntary leave. The submissions did not contain any concessions whatsoever on the issue of voluntary leave.<sup>3</sup>

[15] Furthermore, the Tribunal wishes to reiterate that the General Division is never bound, in whole or in part, by a concession made by the Commission and that it must consider any concession has a submission made by the Commission.

**Issue 2: Did the General Division err in law by failing to consider all the evidence before it and to base its decision on that evidence, as well as the relevant legislation and jurisprudence?**

[16] This ground of appeal is allowed.

[17] The General Division failed to consider all the evidence before it, because it allowed the Claimant's appeal based solely on its erroneous conclusion that the Commission had conceded the issue of voluntary leave. It did not proceed to make complete factual findings at the hearing.

[18] Therefore, the General Division did not exercise its role as the trier of fact. It did not assess all of the evidence and render a decision as per the *Employment Insurance Act* and the applicable case law.

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<sup>3</sup> GD4-1.

## CONCLUSION

[19] The Tribunal allows the appeal. Because the General Division file is incomplete, the Tribunal is returning the file to the General Division for a new hearing on all issues.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	July 10, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Carol Robillard, representative of the Appellant K. M., Respondent