



Social Security  
Tribunal of Canada  
[TRANSLATION]

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v. E. K.*, 2018 SST 962

Tribunal File Number: AD-18-105

BETWEEN:

**Canada Employment Insurance Commission**

Appellant

and

**E. K.**

Respondent

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

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: October 1, 2018

## DECISION AND REASONS

### DECISION

[1] The Tribunal allows the appeal.

### OVERVIEW

[2] The [Respondent, the] Canada Employment Insurance Commission [(Commission),] declared [the Applicant,] E. K. [(Claimant),] ineligible for benefits because he travelled outside Canada during the periods from July 14 to August 28, 2015, and from August 16 to 26, 2016. Furthermore, the Commission decided that the Claimant was ineligible for benefits during the periods from July 14 to August 28, 2015, and from August 16 to 26, 2016, because he did not show that he was available to work. It also imposed a penalty on the Claimant. The Claimant filed a request for reconsideration of the Commission's decisions, but the Commission upheld its initial decisions. The Claimant appealed to the Tribunal's General Division.

[3] The General Division concluded that the Claimant was entitled to benefits for the period from July 14, 2015, to August 3, 2015, because he proved that his absence from Canada fell under one of the exceptions in the *Employment Insurance Regulations* (Regulations).

[4] The General Division also determined that the Claimant had failed to prove that his absence from Canada during the periods from August 4 to 28, 2015, and from August 16 to 26, 2016, was for one of the reasons set out in the Regulations, and that he had failed to prove his availability for work. Finally, the General Division found that the Commission did not exercise its discretionary power in a judicial fashion when it imposed a penalty on the Claimant in the file GE-17-1184. The appeal regarding this issue was allowed in part and the penalty was reduced.

[5] The Tribunal granted leave to appeal. The Commission argued that the General Division erred in law in its interpretation of s. 55(1)(f) of the Regulations when it determined that the Claimant was entitled to benefits after July 28, 2015.

[6] The Tribunal must determine whether the General Division committed an error of law in its interpretation of s. 55(1)(f) of the Regulations.

[7] The Tribunal allows the appeal.

## **ISSUE**

[8] Did the General Division err in law in its interpretation of s. 55(1)(f) of the Regulations when it concluded that the Claimant was entitled to benefits beyond July 28, 2015?

## **ANALYSIS**

### **The Appeal Division's Mandate**

[9] 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*.<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.

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

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

**Issue: Did the General Division err in law in its interpretation of s. 55(1)(f) of the Regulations when it concluded that the Claimant was entitled to benefits beyond July 28, 2015?**

[12] As per s. 12 of the *Social Security Tribunal Regulations*, the Tribunal held the hearing in the Claimant's absence because it was convinced that he had been notified of the hearing.

[13] The Commission argues that the General Division erred in law under s. 55(1)(f) of the Regulations by finding that the Claimant was eligible for benefits beyond July 28, 2015.

[14] Paragraph 55(1)(f) of the Regulations states:

Subject to section 18 of the Act, a claimant who is not a self-employed person is not disentitled from receiving benefits for the reason that the claimant is outside Canada

[...]

(f) for a period of not more than 14 consecutive days to conduct a *bona fide* job search.

[15] In this regard, given that the Claimant left the country on July 14, 2015, to search for work, the Commission argues that the 14-day period laid out in s. 55(1)(f) of the Regulations must begin on July 15, 2015. As a result, because the Regulations describe these days as consecutive, the Commission argues that the 14-day period must end on July 28, 2015.

[16] The Tribunal notes that the Respondent has made no statements on the issue at hand.

[17] The General Division concluded that the Claimant was entitled to benefits for the period from July 14, 2015, to August 3, 2015, because it excluded weekends from its calculations. However, the Regulations clearly state that it is a period not exceeding 14 consecutive days, which is to say without interruption.

[18] After taking into account the arguments in support of the Commission's appeal and s. 55(1)(f) of the Regulations and reviewing the file and the General Division decision, the Tribunal agrees that the appeal should be allowed.

### **CONCLUSION**

[19] For the grounds mentioned above, the Tribunal allows the appeal.

[20] Because the Regulations describe the days as consecutive, the 14-day period must end on July 28, 2015.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	September 25, 2018
METHOD OF PROCEEDING:	Teleconference
REPRESENTATIVE:	Julie Meilleur, Representative for the Appellant