



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. N. v Canada Employment Insurance Commission*, 2019 SST 141

Tribunal File Number: AD-18-794

BETWEEN:

S. N.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 18, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal.

OVERVIEW

[2] The Appellant, S. N. (Claimant), applied for sickness benefits. The Commission notified the Claimant that it refused to pay her Employment Insurance sickness benefits since she would not have been available for work, if she had not been sick. According to the Commission, the Claimant prefers to work part-time with the employer and devote the rest of her time to her business. As a result, the Claimant failed to prove that she would have been available for full-time employment, if it had not been for her ski injury. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision.

[3] In its decision, the General Division found that the Claimant had not proven that she would have been available for work, if it had not been for her injury.

[4] The Tribunal granted leave to appeal. The Claimant argues that the General Division ignored the evidence before it and, therefore, erred by finding that she would not have been available for work even without her injury according to section 18(1)(b) of the *Employment Insurance Act* (EI Act).

[5] The Tribunal must determine whether the General Division erred by finding that the Claimant would not have been available for work even without her injury according to section 18(1)(b) of the EI Act.

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

ANALYSIS

Appeal Division's Mandate

[7] The Federal Court of Appeal has established that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESDA).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 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 would not have been available for work even without her injury according to section 18(1)(b) of the EI Act?

[10] The Claimant argues that the General Division ignored the evidence before it and, therefore, erred by finding that she would not have been available for work even without her injury according to section 18(1)(b) of the *Employment Insurance Act* (EI Act).

[11] The Commission recommends that the Appeal Division allow the Claimant's appeal. It submits that it led the General Division in error by upholding its decision on administrative review.

[12] The Commission argues that, under section 18(1)(b) of the EI Act, the Claimant was entitled to sickness benefits during the period in question because, if she had not been sick, she would have continued working for her usual employer and according to her normal work schedule.

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

[13] After considering the arguments in support of the Claimant's appeal and the Commission's position on appeal, and after reviewing the file, the Tribunal agrees that the appeal should be allowed.

[14] For the reasons mentioned above, the appeal should be allowed.

CONCLUSION

[15] The appeal is allowed.

Pierre Lafontaine
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
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