



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *D. L. v Canada Employment Insurance Commission*, 2019 SST 207

Tribunal File Number: AD-18-675

BETWEEN:

**D. L.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 15, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal allows the appeal.

### **OVERVIEW**

[2] The Appellant, D. L. (Claimant), completed a training program at X, and the employer offered her the position that she had applied for. Because the employer was offering her only 15 hours of work per week, she decided to take a X course instead. The Respondent, the Canada Employment Insurance Commission (Commission), found that the Claimant had voluntarily left her employment to pursue further studies and that this choice was not her only reasonable alternative. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that voluntarily leaving an employment to pursue further studies, except for study programs authorized by the Commission, is a cause for disqualification from receiving Employment Insurance benefits. The General Division found that the Claimant did not have just cause for voluntarily leaving her employment because, at the time, she had reasonable alternatives to leaving her employment.

[4] The Tribunal granted leave to appeal. The Claimant essentially argues that she did not leave her employment to pursue studies and that Employment Insurance had approved and subsidized her X course.

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

### **ISSUE**

[6] Did the General Division base 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?

## 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* (DESD Act).<sup>1</sup>

[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 that it 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 base 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?**

[10] The Claimant is appealing the General Division decision on ground (c) of section 58(1) of the DESD Act. She argues that she did not leave her employment to pursue studies and that Employment Insurance had approved and subsidized her X course.

[11] The Commission is of the view that the General Division did not err in law or in fact on the issue of voluntary leaving.

[12] However, the Commission notified the Claimant in December 2016 that the hours of work at X were excluded from her claim because she did not have just cause for voluntarily leave. The Commission had to make the decision on the previous claim too and impose the disqualification as of January 15, 2016, which it did not do.

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

[13] An investigation was later carried out, and a new decision was made on the same issue in November 2017. The Commission did not have any new facts, and a decision had already been made on that issue. According to section 30(3) of the *Employment Insurance Act*, the disqualification begins the week a claimant leaves their employment. The insurable hours were excluded from the new claim, and the decision on the previous claim was not made in order to impose the disqualification since the Claimant did not have just cause for voluntarily leaving.

[14] The Commission had the information, and it had the opportunity to take action on the voluntary leaving, but it did nothing. As a matter of policy, a Commission error must be corrected as of the current date. The Tribunal notes the General Division was not presented with this information before it made its decision.

[15] In light of the Commission's error, the Commission recommends that the Appeal Division allow the Claimant's appeal so that the disqualification and overpayment are cancelled.

[16] Given the Commission's position on appeal and after reviewing the file, the Tribunal agrees to allow the appeal.

**CONCLUSION**

[17] For the reasons mentioned above, the Tribunal allows the Claimant's appeal so that the disqualification and overpayment are cancelled.

Pierre Lafontaine

Member, Appeal Division

HEARD ON:	March 14, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	D. L., Appellant