



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. P. v Canada Employment Insurance Commission*, 2019 SST 360

Tribunal File Number: AD-18-823

BETWEEN:

**J. P.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Stephen Bergen

DATE OF DECISION: April 17, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is allowed.

### **OVERVIEW**

[2] The Appellant, J. P. (Claimant), felt bullied and disrespected at her employment, and voluntarily left her employment (Retirement Residence) shortly after starting. She was still receiving Employment Insurance benefits when she accepted the position, and she continued to receive benefits after she quit. When the Respondent, the Canada Employment Insurance Commission (Commission) discovered that the Claimant had quit her job, it determined that she had left without just cause and she was disqualified from receiving benefits.

[3] It is unclear what issues were determined in the decision that the Claimant sought to have reconsidered, but the Commission maintained its decision that she voluntarily left her employment. The Claimant appealed to the General Division of the Social Security Tribunal which dismissed her appeal. She now appeals to the Appeal Division.

[4] The Claimant's appeal is allowed. The General Division erred under section 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act) by failing to clarify or define its jurisdiction and thereby interfering with the Claimant's right to know or to answer the case.

### **ISSUE(S)**

[5] Did the General Division fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction?

### **ANALYSIS**

[6] The Appeal Division may intervene in a decision of the General Division, only if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in s.58(1) of the DESD Act.

[7] The only grounds of appeal are as follows:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record, or;
- c) The General Division 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.

**Did the General Division fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction?**

[8] The reconsideration decision of July 5, 2018, defines the issues over which the General Division has jurisdiction. Under the heading “Issue: Voluntarily leaving employment”, the reconsideration decision says only, “we have not changed our decision regarding this issue,” and it states that the decision communicated on May 4, 2018 “is maintained”. Therefore, it would be helpful to reference the May 4 decision to identify what other issues may have been maintained, and to define the General Division’s jurisdiction.

[9] Unfortunately, the substance of the May 4, 2018, decision is unknown. There is no copy of a May 4, 2018 decision on the Commission file or any record of the communication of a verbal decision. The Commission file refers to a May 4, 2018, decision in only one other place; an explanatory note to a “History Detail” screenshot. That note states that a disqualification was established on May 4, 2018, because the Claimant voluntarily left her employment (in connection with the X).<sup>1</sup> The Claimant’s request for consideration also refers to a decision letter that she indicates was sent to her on May 4, 2018, decision.

[10] In her request for reconsideration form, the Claimant describes her request as a request to have the amount that she owes reconsidered. Neither the amount that she owes, nor its character, can be discerned from a review of the Commission file. She might owe a penalty arising from a false statement or she may be required to repay benefits, or she may owe some combination of both. In the explanation that the Claimant attached to her reconsideration request, she notes that

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<sup>1</sup> GD3-35

she has no means to pay back “the \$3,222.00”, and states that she should not be penalized because she would not knowingly submit a false report.

[11] In submissions to the Appeal Division, the Commission states that the penalty of \$3,222.00 had been removed and all other decisions in relation to the Claimant’s first employment (X) had been favourable. Therefore, according to the Commission, the “only issue that remained unfavourable to the Claimant was the indefinite disqualification imposed for voluntarily leaving her employment (X). The Commission submits that this was the only issue before the General Division. The Commission did not participate in the hearing at the Appeal Division, so this is the full extent of the Commission’s response to the jurisdictional and natural justice concerns on which leave was granted.

[12] At the conclusion of its decision, the General Division determined that the Claimant did not have just cause for leaving, which means that the Claimant is disqualified from benefits. The Commission is correct that the Claimant’s disqualification was before the General Division and that the General Division exercised its jurisdiction to address this issue. However, the General Division also devoted three paragraphs to a discussion of the Claimant’s failure to report her quitting at the X, and it then finds that she “failed to provide a reasonable explanation for failing to report the “quit”.<sup>2</sup>

[13] If the Commission is correct that the only issue before the General Division was the Claimant’s disqualification, then this is a strange analysis and finding. Whatever explanation the Claimant provided for failing to report that she quit the X, it is not relevant to the issue of disqualification. It is relevant only to whether the Claimant knowingly made a false statement, and to whether she should be penalized for making a false statement. In fact, what the General Division describes as its finding is actually more of a legal conclusion. If the General Division had jurisdiction to find that the Claimant had made a false statement and that she had no reasonable explanation for doing so, despite the silence of the reconsideration decision on this point, then one might expect the General Division to have also considered whether it was

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<sup>2</sup> AD1A-4

appropriate to impose (or not impose) any associated penalty and, if a penalty was imposed, to review whether it was imposed judicially..

[14] By submitting that the only remaining issue is the Claimant's disqualification, the Commission creates an impression that there are no consequences (such as a penalty, overpayment, or notice of violation) attached to that disqualification, or to the false statement if any. Either there are no consequences, or the consequences have been adjudicated elsewhere.

[15] The problem with the second explanation is that the adjudication is not apparent elsewhere. The March 16, 2018, letter speaks about consequences from disqualification. It is the only clue, on the face of the file, that consequences may attach to a disqualification from the Claimant's leaving the X. However, the substantially redacted March 16, 2018 letter appears to be only an information-gathering letter sent in anticipation that the disqualification will yield consequences. The March 16 letter could not actually have determined the consequences of disqualification because the Commission did not determine that the Claimant should be disqualified until about two months later, on May 4, 2018 - apparently. The Commission did not suggest that the March 16, 2018, letter is actually the overpayment and penalty decision.

[16] There is also a problem with the first explanation. The Claimant informed the Appeal Division that she did receive letters from the Commission relieving her from the penalty and overpayment associated with X. However, she also stated that the Canada Revenue Agency (CRA) is even now assisting the Commission to collect a debt significantly in excess of the \$3,222.00 penalty that the Commission removed. It was not clear if she believes any portion of the outstanding debt arises from a penalty. She believes some or all of the debt is associated with an overpayment related to the benefits she received from February 2017 to July 2017, which is the period after she left the X (for which she was eventually disqualified). If the Claimant is correct and the CRA is collecting a debt for the Commission which has not been formally adjudicated or communicated, this is concerning.

[17] The General Division failed to adequately identify the issues or clarify its jurisdiction. There were a significant number of redactions in the file and a real possibility exists that decisions prejudicial to the Claimant have been made either implicitly in the decision under appeal, or otherwise without documentation. It is possible that the General Division exceeded its

jurisdiction by essentially adjudicating the Claimant's culpability for having made a false statement, despite the fact that the reconsideration letter does not address this issue (and it can not be found in the missing initial decision). However, it is also possible that the General Division was correct to have considered the false statement, but that it failed to exercise its jurisdiction by failing to consider the consequences of that false statement. It is possible that the General Division refused to exercise its jurisdiction in failing to consider the overpayment that flowed from the disqualification: After all, the creation of a debt to the crown for benefits that were mistakenly paid following a disqualification is not discretionary, and is a matter of calculation and not adjudication.

[18] The ambiguity and incompleteness of the Commission file and of the decisions made by the Commission have resulted in a corresponding ambiguity as to the issues over which the General Division took jurisdiction, or should have taken jurisdiction. Therefore, I am unable to find on a balance of probabilities that the General Division either refused to exercise its jurisdiction or that it exceeded its jurisdiction.

[19] However, considering the file disclosure and the information and the Commission's representations and actions, I accept that the Claimant could not have known what decisions have or have not been made, the justification for those decisions, or where or how to seek a remedy. The Claimant was handicapped in her ability to know the Commission's case, and to respond meaningfully in her appeal at the General Division. Her right to be heard was therefore compromised.

[20] Therefore, I find that the General Division erred under section 58(1)(a) of the DESD act.

## **CONCLUSION**

[21] The appeal is allowed.

## **REMEDY**

[22] In accordance with my authority under section 59 DESD Act, I am referring the matter back to the General Division for reconsideration.

[23] I have no authority to refer the matter to the Commission or to direct the Commission. However, I would suggest that, in the course of its reconsideration, the General Division seek clarity from the Commission on its determination of any consequences (such as overpayment, penalty, or notice of violation) that may have been imposed in connection with either the Claimant's disqualification following her leaving the X, or the false statement she is alleged to have made after she left the X.

Stephen Bergen  
Member, Appeal Division

HEARD ON:	April 9, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. P., Appellant
Written Submission	S. Prud'homme, representative for the Respondent