Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *L. P. v Canada Employment Insurance Commission*, 2019 SST 495

Tribunal File Number: AD-19-126

BETWEEN:

L. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 17, 2019

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, Louise Paquet (Claimant), applied for regular Employment Insurance benefits. Between July 30, 2018, and August 13, 2018, the Claimant left her region, X, to go to X. The Canada Employment Insurance Commission (Commission) imposed a disentitlement on the Claimant because it found that she was not available for employment. The Claimant requested a reconsideration of that decision. However, the Commission upheld its initial decision. The Claimant appealed that decision to the Tribunal's General Division.

[3] The General Division found that the Claimant had failed to prove that she wanted to return to the labour market, that she had made efforts to find suitable employment, and that she did not impose personal conditions that limited her chances of returning to the labour market. It found that the Claimant had therefore failed to meet the burden of proof for showing her availability.

[4] The Tribunal granted leave to appeal. The Claimant submits that the General Division erred in finding that she was not available for work and, more particularly, in its interpretation of section 9.001 of the *Employment Insurance Regulations* (EI Regulations). She argues that the General Division ignored and added criteria for determining whether the efforts a claimant is making to find suitable employment constitute reasonable and customary efforts.

[5] The Tribunal must decide whether the General Division erred in finding that the Claimant was not available for work and, more particularly, in its interpretation of section 9.001 of the EI Regulations.

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

ISSUE

[7] Did the General Division err in finding that the Claimant was not available for work and, more particularly, in its interpretation of section 9.001 of the EI Regulations?

ANALYSIS

Appeal Division's Mandate

[8] The Federal Court of Appeal has determined that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).[1]

[9] 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.

[10] 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.

Issue: Did the General Division err in finding that the Claimant was not available for work and, more particularly, in its interpretation of section 9.001 of the EI Regulations?

[11] The appeal has no merit.

[12] The Claimant maintains that the General Division erred in finding that she was not available for work and, more particularly, in its interpretation of section 9.001 of the EI Regulations. She argues that the General Division ignored and added criteria for determining whether the efforts that a claimant is making to obtain suitable employment constitute reasonable and customary efforts.

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

[13] The Claimant initially told the Commission that she moved to X from July 30 to August 13, 2018, to see whether she could move there when she retires in June 2020.[2]

[14] It is true that, from July 30 to August 13, 2018, the Claimant frequented the local employment centre in X, gave her business card to a day care, left her name with several people, and tried to contact a school board. She also consulted the newspapers in X. However, the evidence shows that the goal of all these efforts was clearly to settle in the region later and not to find employment during the benefit period.

[15] In addition, the Claimant initially told the Commission that she would return to working for her usual employer, a school board in the X region, in September 2018 because her employment was secure.[3] She never told the Commission that she wanted to settle in X at that time if an opportunity presented itself. As a result, the General Division refused to accept the Claimant's assertion that she would have accepted employment in X if she had been offered employment during her stay.

[16] However, in the Claimant's view, the General Division erred since she remained available for employment because she constantly had her cell phone with her and could therefore consult job offers on her cell phone. She read advertisements for jobs in X in a local newspaper. Furthermore, she could return to her region by driving 17 hours.

[17] It is well established in Federal Court of Appeal case law that a claimant cannot merely wait to be called in to work but must seek employment in order to be entitled to benefits. They cannot merely be available on-call while making other efforts or completing other activities during their benefit period.[4]

[18] The Claimant also argued that the General Division ignored and added criteria for determining whether the efforts that a claimant is making to obtain suitable employment constitute reasonable and customary efforts.

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[2] GD3-18.
[3] GD3-26.
[4] *Lamirande v Canada (Attorney General)*, 2004 FCA 311; *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93.

[19] I must refer to section 9.001 of the EI Regulations to determine whether the Claimant's efforts were reasonable and customary.

[20] The criteria for determining whether the efforts that a claimant is making to obtain suitable employment constitute reasonable and customary efforts include making sustained efforts, contacting prospective employers, and submitting job applications.

[21] The General Division determined that the Claimant's efforts from July 30 to August 13, 2018, were not sustained because that period concerned a future plan, not a job search during the benefit period. Furthermore, it determined that the evidence showed that the Claimant did not contact employers or submit job applications outside X during that period.[5] The General Division found that the Claimant had not shown that she made reasonable and customary efforts according to the requirements of the EI Regulations.

[22] After reviewing the appeal file, the General Division's decision, and the Claimant's arguments, the Tribunal finds that the General Division properly applied the *Faucher* criteria and section 9.001 of the EI Regulations when assessing the Claimant's availability.[6]

[23] For the reasons mentioned above, the Tribunal has no choice but to dismiss the Claimant's appeal.

[5] GD3-18.
[6] *Faucher*, A-56-96.

CONCLUSION

[24] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 14, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Sylvain Bergeron, Representative for the Appellant L. P., Appellant