



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. A. v Canada Employment Insurance Commission*, 2019 SST 623

Tribunal File Number: AD-18-764

BETWEEN:

**M. A.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Janet Lew

DATE OF DECISION: July 3, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is allowed in part.

### **OVERVIEW**

[2] In November 2016, the Appellant, M. A. (Claimant), applied for Employment Insurance regular benefits after his employment at a golf and country club ended. The Canada Employment Insurance Commission (Commission) denied his claim for benefits because it found that he was going to be in school and therefore unavailable for work.<sup>1</sup> More than a year later, the Claimant filed an appeal with the General Division. He said that he was appealing a reconsideration decision that he had recently received, in February 2018, and he was appealing a decision by the Commission that found that he had voluntarily left his employment. The General Division dismissed the appeal because it found that the Claimant was more than a year late in filing an appeal of the Commission's January 2017 reconsideration decision.

[3] The Claimant is now appealing the General Division's decision. He argues that the General Division looked at the wrong reconsideration decision and therefore examined the wrong issue altogether. Instead of addressing the issue of whether he had voluntarily left his employment, it looked at the reconsideration decision that dealt with whether he was available for work.

[4] I am dismissing the appeal on the availability issue because at the time the General Division it made its decision, it did not have any evidence of another reconsideration decision. However, the Commission is prepared to accept that it would be in the interests of justice to send this matter back to the General Division so that it can address the issue of voluntary leave. Even though I do not have a copy of any decision—whether by the Commission or the General Division—that deals with the voluntary leave issue, I am returning this matter to the General Division on only the issue of voluntary leave. I am satisfied that the Commission communicated a decision to the Claimant that he was not entitled to benefits because it found that he had

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<sup>1</sup> See Commission's letter dated December 29, 2016, at GD3-23 and Commission's reconsideration decision dated January 18, 2017, at GD3-29 to GD3-30.

voluntarily left his employment. As a matter of natural justice, the Claimant should be given the chance to be heard on this issue.

## **FACTUAL BACKGROUND**

[5] The Claimant worked for a golf and country club from April 2016 to November 2016. According to the Record of Employment, he left that employment because his contract ended and there was no more work.<sup>2</sup> He made a claim for Employment Insurance benefits. In his application, he stated that he was going to be taking a training course from January 30, 2017 to February 24, 2017.<sup>3</sup> Because he was going to be in school, the Commission decided that he was not available for work, so it would not be paying him any benefits for this timeframe.<sup>4</sup> The Claimant called the Commission to advise that his employer had recommended the training to him and that he was going to be meeting with provincial representatives about the training course.<sup>5</sup> The Commission also advised him that he had to file biweekly reports. The Claimant asked the Commission to reconsider its decision.<sup>6</sup>

[6] In another phone call with the Commission, the Claimant agreed that he would not be able to work while he was in school. He stated that he understood that he would not be entitled to receive any benefits while he was in school, but he suggested that he was still interested in getting benefits for the period when he was not working or going to school.<sup>7</sup>

[7] The Commission wrote to the Claimant again on January 18, 2017. It said that it had not changed its mind. It still found that the Claimant would not be available for work while he was in school, so it would not pay him any benefits while he was in school.<sup>8</sup>

[8] The Claimant appealed the Commission's reconsideration decision. He filed a Notice of Appeal with the General Division on March 7, 2018. He wrote that he was unable to send a copy of the 'Reconsideration of Employment Insurance' that he received on February 9. He stated that

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<sup>2</sup> See Record of Employment dated November 17, 2016, at GD3-21 to GD3-22.

<sup>3</sup> See Claimant's Application for Employment Insurance benefits, filed November 25, 2016, at GD3-3 to GD3-20.

<sup>4</sup> See Commission's letter dated December 29, 2016, at GD3-23.

<sup>5</sup> See phone log notes for January 10, 2017, at GD3-24.

<sup>6</sup> Request for Reconsideration filed on January 20, 2017, at GD3-25 to GD3-26.

<sup>7</sup> See Supplementary Record of Claim, dated January 18, 2017, at GD3-27 to GD3-28.

<sup>8</sup> See Commission's reconsideration decision dated January 18, 2017, at GD3-29 to GD3-30.

he received the reconsideration decision on February 9, 2018. He was appealing because he disagreed with the Commission's decision. He claims that he did not voluntarily leave his work at the golf and country club.<sup>9</sup> He did not dispute his unavailability for work from January 30 to February 24, 2017.

[9] On April 12, 2018, the Claimant filed a copy of the Commission's reconsideration decision dated January 18, 2017.<sup>10</sup> The General Division found that the Commission had communicated its decision on January 18, 2017 and, as such, the Claimant should have filed his appeal within 30 days. However, it found that the Claimant waited 469 days before he filed an appeal on May 4, 2018. Not only was the Claimant late, but because more than a year had passed, the General Division found that it did not have any discretion to extend the time for filing the notice of appeal.

[10] The Claimant sought leave to appeal the General Division's decision. This means that he had to get permission from the Appeal Division before he could move on to the next stage of his appeal. The Claimant argued that Service Canada had given the wrong information to the General Division. He says that he had requested benefits for the summer and fall of 2017—not 2016. I granted permission to the Claimant because I found that there was an arguable case that the General Division had considered the wrong reconsideration decision. The General Division examined the reconsideration decision dated January 18, 2017, even though the Claimant said that he was appealing a reconsideration decision that he received in February 2018.

[11] The Commission responded that I should dismiss the appeal because it was reasonable for the General Division to have applied subsection 52(2) of the *Department of Employment and Social Development Act* (DESDA) and to have decided not to proceed with the appeal on the reconsideration decision dated January 18, 2017. After all, and as I noted in my leave to appeal decision, the General Division never received a copy of any other reconsideration decisions other than the January 18, 2017 decision. The Claimant did not produce a copy of the reconsideration decision that he says that he received in February 2018 before the General Division made its decision. Plus, the Claimant never disputed the Social Security Tribunal's letter of June 8, 2018,

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<sup>9</sup> See Notice of Appeal at GD2-1 to GD2-3.

<sup>10</sup> See Notice of appeal at GD2A.

in which it seemed to have determined that his appeal appeared to be late, until after the General Division made its decision.

[12] In August 2018, the Claimant sent a copy of the Commission's reconsideration letter dated January 12, 2018 to the General Division. He apparently asked the General Division to reconsider its decision but by then, the General Division stood *functus officio*. That means that it could not reopen and revisit its decision because it was considered to be a final decision, subject to appeal.

[13] In the interests of fairness and the right to be heard, the Commission recommends that I return the matter to the General Division on only the issue of voluntary leave.

## **ISSUES**

[14] The issues are:

- (a) Did the General Division consider the wrong reconsideration decision?
- (b) Did the Claimant voluntarily leave his employment with the golf and country club?

## **GROUND OF APPEAL**

[15] The only three grounds of appeal under subsection 58(1) of the DESDA are:

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

[16] The Claimant argues that there was a breach of natural justice in that Services Canada gave the wrong records to the Social Security Tribunal. He claims that this caused the General Division to base its decision on the wrong information.

## **ANALYSIS**

### **(a) Did the General Division consider the wrong reconsideration decision?**

[17] In my leave to appeal decision, I found that there was an arguable case that the General Division could have considered the wrong reconsideration decision. After all, in his appeal to the General Division, the Claimant said that he was appealing the reconsideration decision that he had received in February 2018. More importantly, he said that he did not agree with the Commission's decision that he had voluntarily left his employment with the golf and country club.

[18] The Claimant's Notice of Appeal should have alerted the General Division that perhaps he was referring to another reconsideration decision. The Claimant likely would have received the January 18, 2017 reconsideration decision in 2017, not 2018. Additionally, the January 18, 2017 reconsideration decision was about the Claimant's availability, not whether he had voluntarily left his employment with the golf and country club.

[19] The General Division should have asked the Claimant whether there was a different reconsideration letter from the January 2017 one. If so, did the Claimant expect the second reconsideration decision to be the subject of his appeal before the General Division?

[20] To that end, I stated in my leave to appeal decision that the Claimant should be prepared to produce a copy of the reconsideration decision that he received in February 2018 and explain why he did not produce a copy of it for the General Division.

[21] Ultimately, the General Division had to arrive at a decision based on the evidence before it. The only reconsideration decision it had was the January 18, 2017 letter. Therefore, it had to base its decision on the reconsideration decision it had. I am dismissing the Claimant's appeal on the issue of whether he was late in seeking an appeal of the January 18, 2017 reconsideration decision.

[22] In any event, the January 18, 2017 letter dealt with the issue of whether the Claimant was available for work from January 30, 2017 to February 24, 2017, when the Claimant was in school. The Claimant does not dispute that he was unavailable during this timeframe. He is not seeking any benefits for this timeframe.

**(b) Did the Claimant voluntarily leave his employment with the golf and country club?**

[23] The Claimant is not seeking any benefits from January 30 to February 24, 2017. However, he is however asking for benefits from fall 2017 to early spring 2018 (approximately November 2017 to April 2018). The January 18, 2017 letter did not deal with the issue of the Claimant's entitlement to benefits for late 2017 to early 2018.

[24] In his Notice of Appeal filed with the General Division, the Claimant disagreed with the Commission's decisions to deny him benefits. He denied that he voluntarily left his employment and claims that he had just cause to leave because his employer literally spat on him.<sup>11</sup>

[25] The Commission acknowledges that the General Division did not make a decision on the issue of whether the Claimant voluntarily left his employment with the golf and country club. As such, the Commission argues that it would be inappropriate for the Appeal Division to give the decision that the General Division should have given. I agree because the General Division is the trier of fact and it has yet to assess the evidence on that issue.

[26] Although the General Division did not address the voluntary leave issue, the Commission is prepared to have me return this matter to the General Division for consideration on the voluntary leave issue only, in the interest of fairness and the right for the Claimant to be heard. The Commission says that it is obvious that the Claimant intended to have the issue of voluntary leave before the General Division.

[27] The Claimant says that he received a reconsideration decision in February 2018 in which the Commission found that he had voluntarily left his employment. When the Claimant filed his notice of appeal with the General Division, properly, the Claimant should have filed a copy of the reconsideration decision that he actually wanted to appeal.

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<sup>11</sup> See Notice of Appeal at GD2-3 and oral submissions to Appeal Division on July 3, 2019.

[28] Nevertheless, I am prepared to accept that the Notice of Appeal filed on March 7, 2018, was an appeal of a reconsideration decision that dealt with the issue of voluntary leave. As a matter of fundamental fairness, the Claimant should have the chance to present his case on this issue.

[29] The Claimant assures me that he will be filing a copy of the January 2018 reconsideration letter with the Social Security Tribunal so that there are no questions about which issues the General Division should be addressing.

[30] The Commission should produce its file relating to the Claimant's application that he filed in November 2017 because the existing General Division hearing file is of little relevance to the Claimant's 2017 claim.

## CONCLUSION

[31] The appeal is allowed in part. The appeal is dismissed on the issue of the Claimant's availability from January 30 to February 24, 2017, but the appeal is allowed on the issue of voluntary leave. The matter shall be returned to the General Division for a determination on the issue of whether the Claimant voluntarily left his employment with the golf and country club.

Janet Lew  
Member, Appeal Division

HEARD ON:	July 3, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. A., Appellant  X, Representative for the Appellant  Rachel Paquette, Representative



	for the Respondent
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