



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *T. O. v Canada Employment Insurance Commission*, 2019 SST 671

Tribunal File Number: AD-18-873

BETWEEN:

T. O.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: July 25, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, T. O. (Claimant), has been an X for many years and has worked the past 11 years for the agency X for which he X. The employer lost a contract and that left him with fewer hours of work, reducing his hours from full-time to part-time. As a result, the Claimant applied for Employment Insurance benefits to supplement his reduced income while waiting for his employer to obtain a renewal of the same contract or even a new contract. Following its investigation, the Canada Employment Insurance Commission (Commission) determined that the Claimant had not shown his availability because he made no effort to look for employment. The Claimant requested a reconsideration of the initial decision, but the Commission upheld its decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division found that the Claimant did not intend to find full-time employment other than with his current employer and, therefore, had made no effort in this regard. The General Division found that the Claimant had not shown his availability for work, under section 18(1)(a) of the *Employment Insurance Act* (EI Act).

[4] The Claimant was granted leave to appeal. He argues that the General Division made an error of law in its interpretation of section 18(1)(a) of the EI Act.

[5] The Tribunal must decide whether the General Division made an error of law in its interpretation of section 18(1)(a) of the EI Act.

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

ISSUE

[7] Did the General Division make an error of law in its interpretation of section 18(1)(a) of the EI Act?

ANALYSIS

Appeal Division's Mandate

[8] 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*.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, made an error of 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 make an error of law in its interpretation of section 18(1)(a) of the EI Act?

[11] The Claimant argues that the Commission cannot ask him to leave the employment he has held for 11 years. This would go against the spirit of the EI Act, which prohibits him from leaving his employment. He argues that he has not been dismissed and that he is still employed by his employer. He has received only a reduction of hours while waiting for new contracts. He submits that he has already received benefits twice in the same circumstances.

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

[12] The Tribunal would like first to point out that it has to decide on the issue before it based on the submitted facts. It does not have jurisdiction on the Claimant's two other claims.

[13] There being no precise definition in the EI Act, the Federal Court of Appeal has held on many occasions that availability must be determined by analyzing three factors—the desire to return to the labour market as soon as a suitable job is offered, the expression of that desire through efforts to find a suitable job, and not setting personal conditions that might unduly limit the chances of returning to the labour market—and that the three factors must be considered in reaching a conclusion.²

[14] Furthermore, availability is assessed for each working day in a benefit period in which the claimant must prove that they were capable of and available for work on that day and unable to obtain suitable employment.³

[15] The General Division found that the Claimant did not intend to find employment other than with X where he worked for several years. It found that the Claimant had not demonstrated his desire to return to the labour market as soon as he was offered a suitable job because he wanted to keep his usual employment even though the date of his return to full-time work was unknown.

[16] The General Division also found that the Claimant's availability for work has not led to concrete and sustained searches with the aim of finding employment.

[17] The Claimant admitted that he made no effort to look for employment because his employer was making efforts to renew its service contract and/or obtain a new contract so that he could start working full-time again. He did not know when he would return to work full-time.

² *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.

³ *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

[18] Contrary to the General Division's findings, the Claimant also set conditions that had unduly limited his chances of returning to the labour market because he wanted to remain available only for his usual employer.

[19] The Claimant voluntarily decided not to look for other employment during his period of part-time work without knowing when he would be called back to full-time work. According to section 18(1)(a) of the EI Act, it was therefore up to the Claimant to prove that he was looking for employment and available for work in the meantime, which is not what he did.⁴

[20] As the General Division noted, the founding principles of the Employment Insurance program are not to provide a supplementary income to a person who has temporarily moved from full-time work to part-time work.⁵

[21] The appeal should be dismissed for the reasons mentioned above.

CONCLUSION

[22] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	July 16, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	T. O., Appellant

⁴ *Cornelissen-O'Neill*, A-652-93.

⁵ *Canada (Attorney General) v Gagnon*, 2005 FCA 321.