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

[TRANSLATION]

Citation: *C. T. v Canada Employment Insurance Commission*, 2019 SST 1048

Tribunal File Number: AD-19-418

BETWEEN:

C. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 20, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, C. T. (Claimant), completed two employment periods after which two benefit periods were established and Employment Insurance sickness and regular benefits were paid to him. The Canada Employment Insurance Commission (Commission) determined that the Claimant was not unemployed during weeks in his benefit periods due to his involvement in setting up a yoga studio. It established an overpayment. Furthermore, the Commission imposed a non-monetary penalty, that is, a warning, on him for not declaring his self-employment.

[3] The General Division found that the Claimant was not unemployed for the periods from August 23 to December 18, 2015, and from May 29 to September 17, 2016. It also found that the Claimant had knowingly made false statements to the Commission.

[4] The Claimant obtained leave to appeal the General Division's decision. He submits that the General Division erred in law and made its decision without regard for the material before it.

[5] The Tribunal must determine whether the General Division erred in law and whether it 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.

[6] The Tribunal dismisses the appeal.

ISSUES

Issue 1: Did the General Division err in law in its interpretation of the six factors set out in section 30(3) of the *Employment Insurance Regulations* (EI Regulations) and in finding that the Claimant had not demonstrated that his level of involvement in his business was to such a minor extent that it could not be his principal means of livelihood?

Issue 2: Did the General Division err in its interpretation of section 38 of the *Employment Insurance Act* (EI Act) by finding that it was appropriate to impose a penalty on the Claimant?

ANALYSIS

Appeal Division's Mandate

[7] The Federal Court of Appeal has established that the Appeal Division has no mandate but the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.[1]

[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.[2]

[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 1: Did the General Division err in law in its interpretation of the six factors set out in section 30(3) of the EI Regulations and in finding that the Claimant had not demonstrated that his level of involvement in his business was to such a minor extent that it could not be his principal means of livelihood?

[10] The periods at issue are from August 28 to December 18, 2015, and from May 29 to September 17, 2016.

[11] The Claimant argues that the General Division erred in its analysis of the six factors set out in section 30(3) of the EI Regulations. He argues that he dedicated little time to the business and that his spouse was in fact the one who was running the business. He submits that the General Division exaggerated his participation in the business and that he acted only as a frontman. The Claimant argues that he received no earnings and that the General Division erred

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

in finding that the business could be his principal means of livelihood. Finally, he submits that he always had the intention and desire to return to work despite his post-career reflection period.

[12] The General Division found that, regardless of the Claimant's level of involvement in the business, he was engaged in a business for the purposes of section 30 of the EI Regulations. The evidence before the General Division clearly demonstrates that the Claimant was more than a simple investor, that is, someone who invests a sum of money in a business but is not involved in running the business. It is sufficient to note that the Claimant received several months of training during his benefit periods in order to learn about operating a business.

[13] The General Division found from the evidence, and in light of the six factors set out in section 30(3) of the EI Regulations, that the Claimant had not demonstrated for each of the periods at issue that his level of involvement in his business was to such a minor extent that it could not be his principal means of livelihood.

[14] More recent case law than that on which the General Division relied established that an overall analysis of the six criteria must be conducted, without giving precedence to one or more of the criteria, and that each file must be assessed on its merits.[3] Placing greater significance on any of the criteria constitutes an error in law.

[15] The EI Regulations must be considered in their entirety, given that a person could spend little time on their business but still make it their principal means of livelihood. In addition, a lack of sufficient income does not necessarily mean that a claimant is unemployed.

[16] The Tribunal is of the view that, even if the General Division assigned more weight to the time spent and willingness to seek alternate employment factors, there is no reason to intervene to amend the General Division's finding on the Claimant's unemployment status.

[17] On September 10, 2015, the Claimant registered a business under the name X. He is listed in the business register as the only shareholder in the business, which operates in the yoga industry. However, in various documents dated September 10, 2015, the Claimant acknowledged

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[3] *Martens v Canada (Attorney General)*, 2008 FCA 240; *Canada (Attorney General) v Goulet*, 2012 FCA 62; *Inkell v Canada (Attorney General)*, 2012 FCA 290.

that he holds 50% of the shares in his spouse's name and that she is to receive the dividends in her capacity as holder of said shares.[4]

[18] The General Division, which did not believe the Claimant's testimony during the hearing, found from the evidence that, during each of his benefit periods, the Claimant dedicated himself diligently to the business's activities. It considered that the Claimant had initially stated to the Commission that, while he was receiving benefits, he had taught classes and learned how to manage a yoga studio with the purpose of purchasing one. He was not seeking employment because he was working on a project he was passionate about—opening a yoga studio. The time spent on it allowed him to become known by potential clients of his studio.[5]

[19] The owner-seller of the yoga studio corroborates the Claimant's initial version.[6] She stated to the Commission that since the month of September or October 2015, she had been in the process of selling her studio to the Claimant and his spouse. The Claimant had registered his business X for this reason. She stated that, despite being on sick leave, the Claimant spent, in terms of time, the equivalent of a full-time job on the business.

[20] The owner-seller also stated that, since the Claimant was going to buy the studio and that the sale process had begun, she had hired the Claimant so she could train him and so he could work the front desk. The purpose of this was to show him the ins and outs of the business and teach him everything he needed to know to ensure a smooth transition. All the hours worked were invoiced to the owner-seller through the Claimant's company. The invoices submitted by the studio's owner-seller were from September 2015 to November 2016.[7]

[21] The studio's owner-seller noted that, even after the offer to purchase failed, the Claimant continued his efforts to purchase the studio until October 2016. In addition to hours worked in training and at the front desk, the Claimant also taught yoga classes regularly. The Claimant also invoiced the classes he taught to the owner-seller in his company's name.

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[4] GD2-11, GD2-44, GD2-45.
[5] GD3-180-181.
[6] GD3-170-171.
[7] GD3-213 to GD3-237.

[22] The General Division also found from the evidence that the Claimant had made an offer of $145,000 to purchase the yoga studio. The Claimant had also paid a $15,000 deposit in support of the offer. It found that there was insufficient evidence to conclude that the business was a success. The General Division found that, even if the Claimant's efforts to purchase the studio were unsuccessful, the business had been able to offer services and invoice them, which demonstrates the continuity of the employment or business. It also found that the Claimant held a job with the business that was similar to the one he had held previously.

[23] The General Division found that the Claimant had initially stated to the Commission that he had not looked for employment and that he had not really intended to since the inheritance money he had received had allowed him to pursue his goal of opening a yoga studio, which he eventually did.

[24] The General Division found that, during the hearing, the Claimant had attempted to downplay his involvement in the business, while, during the Commission's investigation, he had admitted, among other things, to working for the yoga studio and to working with the goal of purchasing it.

[25] The General Division's application of the objective test in section 30(3) of the EI Regulations to the Claimant's situation shows us that five of the relevant factors lead to the conclusion that the Claimant's engagement in the business during his benefit period was not to a minor extent. The General Division found from the evidence that the Claimant's involvement was sufficient to rely on it as a principal means of livelihood.

[26] The Tribunal finds that the General Division decision on the Claimant's unemployment status is based on the evidence and submissions before it, and that the decision is consistent with the legislative provisions and case law.

[27] Therefore, the Tribunal cannot accept the Claimant's ground of appeal here.

Issue 2: Did the General Division err in its interpretation of section 38 of the EI Act by finding that it was appropriate to impose a penalty on the Claimant?

[28] The Claimant submits that there should not be a penalty, given that there was no wrongful intent on his part and that he did not mean to make false or misleading statements. He simply did not see himself as a businessperson during the benefit period.

[29] Parliament's only requirement for imposing a penalty is that of knowingly—that is, with full knowledge of the facts—making a false or misleading representation. The absence of the intent to defraud is therefore of no relevance.[8]

[30] The General Division found that the Claimant knew his statements were false or misleading when he filed his reports. The General Division determined that the Claimant had acted with full knowledge of the facts because he knew that he was a shareholder in a business, that he had taught yoga classes, and that the business was invoicing for his services.

[31] The Claimant also stated to the Commission that he had failed to declare his self-employment because he thought his benefits would stop completely.[9]

[32] This ground of appeal is without merit.

CONCLUSION

[33] For the reasons stated above, the Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	June 6, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Bruno-Pierre Allard, Representative for the Appellant

[8] *Canada (Attorney General) v Bellil*, 2017 FCA 104.
[9] GD3-180.