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

[TRANSLATION]

Citation: *Y. G. v Canada Employment Insurance Commission*, 2019 SST 1278

Tribunal File Number: AD-19-481

BETWEEN:

Y. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: October 2, 2019

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, Y. G. (Claimant), is X and he was working on X jobsite. He was on leave for a two-week period. The Canada Employment Insurance Commission (Commission) denied the Claimant's claim for benefits because it found that he had voluntarily taken a period of leave without good cause and that he was not available for work during that period.

[3] The Claimant disputed the Commission's decision. He submitted that, under the collective agreement of X, the employer had required him to take a two-week leave between May 1 and October 31. However, the Commission upheld its initial decision.

[4] The General Division found that the Claimant had not voluntarily taken leave for the two-week period. However, it found that the Claimant was not available for work during that period.

[5] The Claimant obtained leave to appeal the General Division's decision. He argues that the General Division erred in law on the question of availability and that it reached its decision without regard for the material before it.

[6] The Tribunal must decide whether the General Division erred by finding that the Claimant was not available for work and, in particular, by requiring him to show other efforts to find employment during the two-week leave imposed by his employer even though he was registered on the union hiring hall placement list.

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

ISSUE

[8] Did the General Division err by finding that the Claimant was not available for work and, in particular, by requiring that he show other efforts to find employment during the two-week leave imposed by his employer even though he was registered on the union hiring hall placement list?

ANALYSIS

Appeal Division's Mandate

[9] 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*.[1]

[10] 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.

[11] 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: Did the General Division err by finding that the Claimant was not available for work and, in particular, by requiring him to show other efforts to find employment during the two-week leave imposed by his employer even though he was registered on the union hiring hall placement list?

[12] The Claimant's appeal is dismissed.

[13] The Claimant submits that the General Division erred in its interpretation of section 18 of the *Employment Insurance Act* (EI Act) and on the notion of availability. He submits that the General Division erred by requiring him to show other efforts to find employment during the

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

two-week leave imposed by his employer even though he was registered on the union hiring hall placement list and had to return to work at the end of the two weeks. Furthermore, he argues that the Commission never required him to expand the scope of his job search.

[14] The Claimant argues that in Chapter 10.6.4 of the Digest of Benefit Entitlement Principles, the Commission acknowledges that registration with a union hiring hall can show that the Claimant is available for work and that he must seek less favourable employment only after a certain number of weeks of benefits. In the case of a claimant in good standing with their hiring hall, they may restrict their job search to their union hiring hall for three weeks from the start of their claim to a maximum exemption of 16 weeks.

[15] The Tribunal wishes to point out that the Digest is not legally binding. A policy simply reflects the opinion of the administrator who acts under the law. That opinion does not necessarily correspond to the law. Furthermore, the use of the word "may" in Chapter 10.6.4 of the Digest indicates a possibility that a claimant will be considered available through their registration with the union hiring hall—not a certainty.

[16] The General Division determined that the Claimant had not shown any efforts to obtain employment apart from reporting that he had stopped working for his employer to the union hiring hall. It found that reporting his availability to the hiring hall was not sufficient to show that he was actively looking for employment within the meaning of the EI Act. The General Division determined that it could not find that the Claimant's efforts were sustained, reasonable, and customary each working day of his benefit period. It therefore found that the Claimant was not available for work as of August 13, 2018.

[17] The case law the Claimant submitted supports the position that a claimant who is waiting to be called back by their employer is exempt, at least for a reasonable period of time, from having to show an active job search.[2] The Claimant would be justified, for a reasonable period, to consider the promise of being called back to work the most likely way of obtaining a new employment and to act accordingly. Therefore, it would not be appropriate to automatically require a job search given the known date of recall. The case law the Claimant submitted also

[2] CUB 1804, 14685, 14685, 23283, *Charpentier*, A-474-97.

supports the position that the Commission must warn claimants when they have to expand their job search.[3]

[18] There is, however, more recent case law than that submitted by the Claimant that establishes that a claimant cannot merely wait to be called back to work and must look for employment to be entitled to benefits.

[19] The EI Act clearly states that to be entitled to benefits, a claimant must establish their availability for work, and to do this, they must look for work. Availability must be assessed for each working day in a benefit period. This requirement does not go away if the unemployment period is short-term. No matter how little chance of success the claimant may believe a job search would have, the EI Act is designed so that only those who are genuinely unemployed and actively looking for work will receive benefits. A claimant must establish their availability for work and this availability must not be unduly limited.[4]

[20] The Claimant stated to the Commission that he had not made any efforts to find employment other than informing the union hiring hall and the Commission de la construction du Québec [Quebec's construction commission] of his work stoppage. He stated that he had chosen that period of leave because his spouse was on holidays during that time.[5]

[21] In these circumstances, was the Claimant available within the meaning of section 18(1) of the EI Act because he was registered with his union hiring hall? The Tribunal does not believe so.

[22] The evidence before the General Division clearly shows that the Claimant planned to return to work for his regular employer after two weeks. He was not looking for work. Even if the Tribunal had to consider that he was looking for work apart from his registration with the union hiring hall, his search was very limited, which goes against his availability.

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[3] CUB 14708, 15389, 16823, and 18846.
[4] *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93; *Faucher v Canada (Employment and Immigration Commission)*, A-56-96; *Canada (Attorney General) v Cloutier*, 2005 FCA 73; *De Lamirande v Canada (Attorney General)*, 2004 FCA 311; *Canada (Attorney General) v Stolniuk*, A-686-93; CUB 76450; CUB 69221; CUB 64656; CUB 52936; CUB 35563.
[5] GD3-46.

[23] Did the Commission have the obligation to warn the Claimant that he had to expand the scope of his job search?

[24] The Tribunal does not disagree that a warning could be required when a claimant has shown that their efforts to find suitable employment were reasonable. In this case, it is certainly not necessary since the Claimant was not really looking for work because he was returning to his regular employer after two weeks.[6]

[25] 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 *Employment Insurance Regulations* when assessing the Claimant's availability. The Tribunal has no choice but to dismiss the Claimant's appeal.

CONCLUSION

[26] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	September 24, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	Richard Benoit, Representative for the Appellant

[6] *Canada (Attorney General) v Stolniuk*, A-687-93.