



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. R. v Canada Employment Insurance Commission*, 2020 SST 6

Tribunal File Number: AD-19-808

BETWEEN:

L. R.

Applicant / Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal and Appeal Decision by: Janet Lew

Date of Decision: January 6, 2020

DECISION AND REASONS

DECISION

[1] I am granting the application for leave to appeal and allowing the appeal.

OVERVIEW

[2] The Applicant/Appellant, L. R. (Claimant), is appealing the General Division's decision dated October 31, 2019.

[3] The General Division denied the Claimant's appeal for Employment Insurance benefits from December 23, 2015 to January 2, 2016.

[4] The General Division determined that the Claimant had not shown that she was available for work from December 23 to December 25, 2015. The General Division also found that "it would take a fair amount of time to get her daycare up and running."¹ Because of this, it found that she had worked a full working week for the week from December 27, 2015 to January 2, 2016. However, by being unavailable for work and in having worked a full working week, the Claimant was not entitled to receive Employment Insurance benefits.

[5] The Claimant denied that she had been self-employed in that timeframe.²

[6] The Commission is now conceding the appeal. The Commission requests that I allow the appeal. Given the evidence that was before the General Division, I agree that this request is appropriate. The application for leave to appeal is granted and the appeal is allowed.

PRELIMINARY MATTER

[7] The Commission set out its position to a settlement conference in a memorandum dated December 31, 2019. As the memorandum formed part of the settlement conference process, it was of a confidential nature. However, the Commission was prepared to let its memorandum

¹ See General Division decision at para. 33.

² See Claimant's Application to the Appeal Division – Employment Insurance, at AD1-3.

form part of the Appeal Division hearing file. The Claimant consented to having the Commission's memorandum form part of the hearing file.

ISSUES

[8] The issues are as follows:

- (a) Did the General Division overstep its authority?
- (b) Did the General Division base its decision on any factual errors, without regard for the evidence before it?

ANALYSIS & OUTCOME

[9] Appeals at the Appeal Division are usually a two-step process. At the first step, claimants have to show that their appeal has a reasonable chance of success or that there is an arguable case. They need to do this so that they can get permission to move on the next and final stage of the appeal process.

[10] Before I decided whether to grant leave to appeal, I questioned whether there was a jurisdictional issue. Did the General Division have any jurisdiction to decide whether the Claimant was available for work from December 23 to 25, 2015?

[11] I also questioned whether the General Division made any factual errors. In particular, was there enough evidence to show that "it would take a fair amount of time to get her daycare up and running?"

[12] The Commission agreed that the General Division did not have the authority or jurisdiction to decide whether the Claimant was available from December 23 to 25, 2015. After all, the issue of the Claimant's availability had not been subject to a reconsideration under section 112 of the *Employment Insurance Act*. Therefore, the issue could not suddenly arise and become an issue for appeal under section 113 of the *Employment Insurance Act*.

[13] The Commission also agreed that there was not enough evidence to show that the Claimant's involvement in starting up her daycare business from December 23, 2015 to January 1, 2016, was of a minor extent.

[14] The Commission asks the Appeal Division to give the decision that the General Division should have given and to allow the Claimant's appeal.

[15] I agree with the Commission's submissions on both issues. As such, I will address both stages of the appeals process together. I am granting leave to appeal and allowing the appeal.

CONCLUSION

[16] At the first step of the appeal process, I find that the appeal has a reasonable chance of success, so I am granting leave to appeal.

[17] At the next and final step, I find that the General Division exceeded its jurisdiction and that it based its decision on factual errors without regard for the material before it. For these reasons, I am also allowing the appeal. Effectively, this means that the Claimant was entitled to receive Employment Insurance benefits.

Janet Lew
Member, Appeal Division

REPRESENTATIVES:	L. R., Self-represented Isabelle Thiffault, Representative for the Respondent
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