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

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v D. L.*, 2020 SST 85

Tribunal File Number: AD-19-828

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

D. L.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 7, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal.

OVERVIEW

[2] The Respondent, D. L. (Claimant), applied for Employment Insurance benefits starting April 14, 2019. On June 5, 2019, he stated that he had not yet looked for work because of his family situation. On July 2, 2019, the Commission informed the Claimant that it found that he was not available for work as of April 15, 2019. The decision created an overpayment of $5,620.

[3] The Claimant requested a reconsideration of the Commission's decision. He argued that the Commission had not given him any warning before cutting his benefits and that he had not yet looked for work because of a Court order. The Commission upheld its initial decision. The Claimant appealed to the General Division.

[4] The General Division determined that the Claimant had not shown that he was available for work under section 18(1)(a) of the *Employment Insurance Act* (EI Act). However, since the Commission had not notified the Claimant of his obligation to look for work before June 10, 2019, the General Division imposed the disentitlement only from that date.

[5] The Commission obtained leave to appeal the General Division decision. It argues that the General Division made an error of law in its interpretation of section 18(1)(a) of the EI Act.

[6] 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.

[7] The Tribunal allows the Commission's appeal.

ISSUE

[8] 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

[9] 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* (DESD 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, 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.

PRELIMINARY REMARKS

[12] In accordance with section 12(1) of the *Social Security Tribunal Regulations*, the Tribunal proceeded with the hearing in the Claimant's absence because it was satisfied that he had been notified of the hearing.

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

[13] The General Division determined that the Claimant had not shown that he was available for work under section 18(1)(a) of the EI Act. However, since the Claimant had

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

not been notified by the Commission of his obligation to look for work before June 10, 2019, the General Division imposed the disentitlement only from that date.

[14] The Commission argues that the General Division made an error of law in its interpretation of section 18(1)(a) of the EI Act. In particular, it argues that the General Division made an error in finding that the disentitlement should not have been imposed before June 10, 2019, since the Commission had not notified the Claimant of his obligation to find an employment before that date.

[15] The Tribunal agrees with the General Division that notification may be required when a claimant has shown that their efforts to obtain a suitable employment were reasonable. The Commission can, and in certain cases must, warn a claimant to expand their job search if they want to continue meeting the availability requirements under the EI Act. Such notification will help determine whether the claimant is still available.

[16] However, when notification is useless, like in this case, it is certainly not necessary since the Claimant admitted that he was not looking for work or that he had not made efforts to find an employment since the start of his claim for benefits because of his personal situation.[2]

[17] The Federal Court of Appeal has clearly established that claimants must prove their availability on all working days when applying for benefits. The General Division cannot ignore that availability is one of the essential conditions of the right to benefits.[3]

[18] It is therefore appropriate to allow the Commission's appeal.

CONCLUSION

[19] The Tribunal allows the appeal.

[20] The Claimant's disentitlement must be imposed as of April 15, 2019.

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[2] GD3-16, GD3-17, and GD3-19.
[3] *Canada (Attorney General) v Stolniuk*, A-686-93; *Canada (Attorney General) v Le Duc*, A-134-95.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	February 5, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Rachel Paquette, Representative for the Appellant