



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. Y. v Canada Employment Insurance Commission*, 2020 SST 752

Tribunal File Number: AD-20-685

BETWEEN:

A. Y.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 4, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, A. Y. (Claimant), has been a teacher at the Commission scolaire de Montréal [Montréal school board] since 2008. On June 29, 2018, the Claimant filed a claim for benefits effective July 1, 2018. On July 14, 2019, the Claimant filed a claim for benefits effective June 30, 2019.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), informed the Claimant that it was reconsidering his claims for benefits starting July 1, 2018, and June 30, 2019. It decided that, for both claims, the Claimant did not show that he had good cause for not taking advantage of an opportunity for suitable employment that the Commission scolaire de Montréal offered him, first on July 1, 2018, then on July 1, 2019.

[4] The Claimant asked the Commission to reconsider the decisions, but the Commission upheld its initial decisions. The Claimant appealed the reconsideration decisions to the Tribunal's General Division.

[5] The General Division found that the Claimant had not shown that he had good cause for not applying for a suitable employment after learning that it was vacant or becoming vacant, for not taking advantage of an opportunity for suitable employment at the end of each of the school years, or for failing to accept the employment after it was offered to him, under sections 27(1)(a) and (b) of the *Employment Insurance Act* (EI Act).

[6] The Claimant was granted leave to appeal the General Division decision. He argues that the General Division made an error of law in its interpretation of section 27 of the EI Act. He also argues that the General Division ignored the evidence before it.

[7] The Tribunal must decide whether the General Division made an error of 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.

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

ISSUES

[9] Did the General Division make an error of fact or law in its interpretation of section 27 of the EI Act by finding that the Claimant did not take advantage of an opportunity for suitable employment?

[10] Did the General Division make an error by finding that the Commission exercised its discretion judicially when it determined that the duration of the disqualification imposed on the Claimant would be established at 12 weeks?

ANALYSIS

Appeal Division's Mandate

[11] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

[12] 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

[13] 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.

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

² *Ibid.*

The General Division Decision

[14] The General Division had to decide whether the disqualification imposed on the Claimant was justified under section 27(1) of the EI Act because he did not take advantage of an opportunity for suitable employment.

[15] The General Division found that the Claimant had not shown that he had good cause for not applying for a suitable employment after learning that it was vacant or becoming vacant, for not taking advantage of an opportunity for suitable employment at the end of each of the school years, or for failing to accept the employment after it was offered to him, under sections 27(1)(a) and (b) of the EI Act.

The Claimant's Position

[16] The Claimant argues that the General Division made an error of law in its interpretation of section 27 of the EI Act. He also argues that the General Division ignored the evidence before it.

[17] In particular, the Claimant argues that the Commission imposed section 27 of the EI Act on him when sections 33(a) and (b) of the *Employment Insurance Regulations* (EI Regulations) should confirm his right to benefits. He submits that he did not receive a genuine offer of employment from the Commission scolaire de Montréal during the summer. The Claimant says that the Commission scolaire de Montréal cannot guarantee it will assign him a suitable job in his field of qualification.

[18] The Claimant submits that the so-called offer of employment by the Commission scolaire de Montréal on July 1, 2018, and July 1, 2019, was not for the summer non-teaching period, but for the beginning of the school year. He therefore considers himself entitled to Employment Insurance benefits during the summer non-teaching period, in accordance with section 33 of the EI Regulations.

[19] The Claimant also argues that the Commission could not find that he had turned down a job on July 1 because the jobs offered on that date were only for teachers who were not on the priority list.

[20] In support of his position, the Claimant refers to Chapter 14 of the *Digest of Benefit Entitlement Principles*, concerning teachers, which says that an invitation to a general recruitment session during the summer non-teaching period does not constitute a genuine offer of employment. He also argues that he received no job offers during the summer non-teaching period—a period during which he was receiving benefits.

The Facts

[21] The evidence shows that there were online assignment sessions and a placement assembly in June 2018 and 2019 for staff on the priority hiring list. Unfilled positions were then offered in June and July to qualified teaching staff that were not on the priority list. The next placement assemblies were held in August, before the start of the school year.

[22] The Claimant, who was at the top of the priority list, was informed of the online assignment sessions, but he did not attend because he chose to go to Algeria in September to be near his mother. He knew that he would not be available for the beginning of the school year. He therefore did not want to make a commitment to the Commission scolaire de Montréal knowing that he could not respect it.

[23] The employer stated that the Claimant could have gotten positions starting July 1 at each of the June sessions for 2018 and 2019. The employer said that the Claimant could have gotten contracts at 100% because there was already a teacher shortage in 2013, and the situation did not improve in the following years. The employer noted three (3) positions per year, but the Claimant also had access to other positions.

Did the General Division make an error of fact or law in its interpretation of section 27 of the EI Act by finding that the Claimant did not take advantage of an opportunity for suitable employment?

[24] The Claimant submits that he did not receive a genuine offer of employment during the summer. He says that the Commission scolaire de Montréal cannot guarantee it will assign him a suitable job in his field of qualification.

[25] The Claimant relies on Chapter 14 of the *Digest of Benefit Entitlement Principles*, concerning teachers, which indicates that an invitation to a general recruitment session during the summer non-teaching period does not constitute a genuine offer of employment. He also argues that he received no job offers during the summer non-teaching period—a period during which he was receiving benefits.

[26] The General Division decided that, although the Claimant did not turn down a job because the employer did not offer him one directly or personally, he had an opportunity for suitable employment for the beginning of each of the school years.

[27] Did the Commission scolaire de Montréal's offer of employment have to be actual or genuine?

[28] I do not think so.

[29] Section 27(1)(b) of the EI Act says that a claimant is disqualified from receiving benefits if, without good cause, the claimant has not taken advantage of an opportunity for suitable employment. This section does not require that an actual job offer be refused.

[30] The disqualification for not taking advantage of an opportunity for suitable employment can be imposed without an actual job offer being made [translation] “so long as the claimant has an opportunity for suitable employment.”³

[31] Did the Claimant fail to take advantage of an opportunity for suitable employment?

³ CUB 18749 and CUB 16748.

[32] I think he did.

[33] As the General Division decided, the Claimant did not take advantage of an opportunity for suitable employment that the Commission scolaire de Montréal offered him. The Claimant has been teaching at the Commission scolaire de Montréal since 2008. He is at the top of the priority list and was informed of the online assignment sessions, but he chose not to attend because he wanted to go to Algeria in September to be near his mother. He knew he would not be available for the beginning of the school year.

[34] The employer stated that the Claimant could have gotten contracts at 100% starting on July 1 because there was already a teacher shortage in 2013, and the situation did not improve in the following years. The employer noted three (3) positions per year, but the Claimant also had access to other positions.

[35] As the General Division noted, the Claimant deliberately chose to opt out of the employer's process for assigning teaching contracts and teaching positions that would have been offered to him for the beginning of the school year.

[36] Was the employment suitable?

[37] I am of the view that, if the Claimant had chosen to take part in the assignment sessions or attend the placement assembly, the positions he would have had access to would have represented the same type work that he had at the employer since 2008—that is, teaching—and he would have been guaranteed a regular, full-time position. It was a suitable employment even though it was not in his field. The Claimant returned to work for the Commission scolaire de Montréal in 2019, after he returned to Canada.

[38] Did the Claimant have good cause for not taking advantage of an opportunity for suitable employment?

[39] As the General Division decided, I am of the view that the Claimant's reasons for not applying for a job do not constitute good cause for not taking advantage of an opportunity for suitable employment.

[40] The appropriate criterion for determining what constitutes good cause is knowing whether the Claimant has proven that he did what a reasonable person would have done in the same circumstances to satisfy themselves of their rights and obligations under the EI Act.

[41] As the General Division noted, the Claimant made the personal choice to go to Algeria for family reasons instead of seizing the opportunity to secure suitable employment. He did not want to commit under those circumstances. I am of the view that this situation does not represent good cause for not taking advantage of an opportunity for suitable employment.

[42] I am of the view that the Claimant did not do what a reasonable person would have done when he decided to opt out of the employer's process for filling vacancies when he was at the top of the priority list and had access to teaching positions.

[43] In acting as he did, the Claimant caused his unemployment situation, and he cannot make all contributors to the EI fund responsible for that decision.

[44] Did the General Division refuse to exercise its jurisdiction by not considering section 33 of the EI Regulations?

[45] I do not think so.

[46] Although the Claimant argues that his employment contract ended in June, and he alleges that he worked as a substitute, section 33 of the EI Regulations is not relevant to this case.

[47] The General Division had to decide whether the Claimant failed to take advantage of an opportunity for suitable employment, not whether his contract ended in June or whether he worked as a substitute during the school year under section 33 of the EI Regulations.

[48] I am of the view that the General Division did not refuse to exercise its jurisdiction.

Did the General Division make an error by finding that the Commission exercised its discretion judicially when it determined that the duration of the disqualification imposed on the Claimant would be established at 12 weeks?

[49] Section 28(1)(a) of the EI Act indicates that the number of weeks of a disqualification is not fewer than 7 weeks or more than 12 weeks. The Commission has the authority to determine the duration of the disqualification period.

[50] Section 28(2) of the EI Act clearly states that the weeks of disqualification are to be served during the weeks following the waiting period for which at least \$1 in benefits would otherwise be payable if the disqualification had not been imposed.

[51] The Federal Court of Appeal has confirmed the principle that the Tribunal should not interfere with discretionary decisions of the Commission when determining the duration of the disqualification period unless the Commission exercised its discretion in a “non-judicial manner”—that is, by considering irrelevant factors or disregarding relevant factors; in other words, unless the exercise of that discretion is tainted by a fundamental error.⁴

[52] The General Division determined that the Commission had exercised its discretion judicially when it determined that the duration of the disqualification period imposed on the Claimant was 12 weeks in each case.

[53] The Claimant did not take advantage of an opportunity for suitable employment that was offered to him by the Commission scolaire de Montréal. He is at the top of the priority list and was informed of the online assignment sessions, but he deliberately chose not to attend because he wanted to go to Algeria in September to be near his mother. He chose not to commit to the school board when he had access to teaching positions.

[54] I see no reason that would justify my intervention in the issue of the Commission’s discretion.

⁴ *Canada (Attorney General) v Thompson*, A-8-95; *Canada (Attorney General) v Owen*, A-465-94.

CONCLUSION

[55] For the reasons stated above, the Tribunal dismisses the Claimant's appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	August 27, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	A. Y.