



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *ZW v Canada Employment Insurance Commission*, 2021 SST 83

Tribunal File Number: AD-20-855

BETWEEN:

Z. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 3, 2021

DECISION AND REASONS

DECISION

[1] The Claimant's appeal is allowed. The file returns to the General Division for reconsideration.

OVERVIEW

[2] The Appellant (Claimant) received employment insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), later started an investigation and determined that he knowingly made false representations. The Commission also found that he did not prove that he was available for work.

[3] On December 17, 2019, the Commission sent him a decision letter to this effect. On June 21, 2020, the Claimant asked the Commission to reconsider its decision. The Commission determined that the Claimant's reason for the delayed reconsideration request did not meet the requirements of the law. The Claimant appealed to the General Division the Commission's denial to reconsider its initial decision.

[4] The General Division concluded that the Commission had exercised its discretion in a judicial manner in denying the Claimant's request to extend the 30-day period to make a request for reconsideration of the initial decision.

[5] The Claimant was granted leave to appeal. He submits that the General Division based its decision on several erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[6] I must decide whether the General Division made an error in law or based its decision on several erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[7] I am allowing the Claimant's appeal because I find that the General Division made an error in law. The file returns to the General Division for reconsideration.

ISSUE

[8] Did the General Division make an error in law or render its decision based on several erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it?

ANALYSIS

Appeal Division's mandate

[9] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that 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.²

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, I must dismiss the appeal.

PRELIMINARY REMARKS

[12] I have decided to render a decision on the record because the Claimant is not available for a hearing in March 2021. I also have an obligation to conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

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

² *Idem*.

Did the General Division make an error in law or render its decision based on several erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it?

[13] The Claimant submits that the General Division based its decision on several erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[14] The Claimant submits that the General Division ignored relevant factors in determining whether the Commission acted in a non-judicial manner, namely, that he was seriously ill and that he needed time to gather evidence to support his reconsideration application. He argues that these factors support his position that he had a reasonable explanation for the delay and a continuing intention to request a reconsideration.

[15] The Commission is of the view that the General Division erred in law in its interpretation of the legal test by substituting its discretion to those of the Commission, before concluding that the Commission's refusal was not to be disturbed. It respectfully requests that the Appeal Division allow the Claimant's appeal and return the file to the General Division for a new hearing, pursuant to section 59(1) of the DESD Act.

[16] The legislation has given the Commission the discretionary power to extend the 30-day period to request a reconsideration of a decision.

[17] The General Division had to decide whether the Commission had exercised its discretion judicially when it refused the Claimant's request to extend the 30-day time limit to make a request for reconsideration of the initial decision, under section 112(1) of the *Employment Insurance Act* (EI Act) and section 1 of the *Reconsideration Regulations (Regulations)*.

[18] I find that the General Division decision is rather ambiguous. It appears to have misunderstood its role. The General Division did not receive the task of assessing whether the Claimant met the requirements of section 112 of the EI Act and Section 1 of the Regulations, but whether the Commission had properly exercised its discretion to deny the extension of time.

[19] I am of the view that although the General Division concludes that the Commission has exercised its discretion in a judicial manner by refusing to allow the extension of time, it appears to have come to that conclusion by substituting its own discretion for that of the Commission. This constitutes an error of law.³

[20] For the above-mentioned reasons, and considering that the submissions of the Claimant in support of his appeal demonstrate that the evidentiary record before the General Division is incomplete, I am returning the file to the General Division for reconsideration.

CONCLUSION

[21] The Claimant's appeal is allowed. The file returns to the General Division for reconsideration.

Pierre Lafontaine
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	Z. W., Appellant M. Allen, Representative for the Respondent

³ *Canada (Attorney general) v Chartier*, A-42-90.