



Citation: *DM v Canada Employment Insurance Commission*, 2021 SST 346

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: D. M.
Representative: P. M.
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 22, 2021 GE-21-394

Tribunal member: Pierre Lafontaine
Decision date: July 19, 2021
File number: AD-21-203

DECISION

[1] Leave to appeal is granted. The appeal is allowed.

OVERVIEW

[2] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Applicant (Claimant) was disentitled from receiving Employment Insurance (EI) regular benefits as of November 23, 2020, for two reasons. First, his farming activities meant that he could not be considered unemployed. Second, he had not proven that he was available for work and unable to get work.

[3] After reconsideration, the Commission changed its initial decision. It overturned the decision that the Claimant could not be considered unemployed due to farming activities. It changed its decision on availability and job search. The new decision ended the disentitlement for failure to seek employment, because he had provided a job search. The new decision replaced that disentitlement with another one, for not being available for full-time suitable work without undue restrictions. The Claimant appealed the decision to the General Division.

[4] The General Division found that the Claimant wanted to go back to work as soon as a suitable job was available and that he had not set personal conditions that might have unduly limited his chances of going back to work. However, it found that the Claimant had not made enough efforts to find a suitable job. The General Division concluded that he was not available for work within the meaning of the law.

[5] In support of his application for leave to appeal, the Claimant argues that the General Division 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.

[6] I must decide whether the General Division 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.

[7] I am granting the Claimant leave to appeal and allowing his appeal.

ISSUE

[8] Did the General Division base 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?

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.

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

² *Idem*.

Did the General Division base 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?

[12] I proceeded to hold a settlement conference.

[13] The General Division found that the Claimant wanted to go back to work as soon as a suitable job was available and that he had not set personal conditions that might have unduly limited his chances of going back to work. However, it found that the Claimant had not made enough efforts to find a suitable job. More precisely, it found that he had not looked for work from March 11 to April 16, 2021.

[14] The parties agree that the General Division ignored facts in applying the second *Faucher* factor to determine the Claimant's availability.³ The General Division found that from March 11, 2021 to April 16, 2021, the Claimant made insufficient efforts to find work.⁴ However, the Claimant reported sick from March 26, 2021, because he could not work.⁵ Therefore, the General Division relied erroneously on this period to assess the Claimant's availability for regular benefits.

[15] The Commission submits that the Claimant has proven his availability to work starting from January 20, 2021, following his discussion with the Commission held on January 19, 2021. It submits that this conclusion will allow the Claimant to receive regular benefits from January 17 to March 27, 2021, with a disentitlement remaining for January 18-19, 2021. The Claimant will need to serve a one week-waiting period. The Commission further submits that the Claimant will be able to receive sickness benefits from March 29, 2021, because the disentitlement will be modified to end on January 19, 2021.

³ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁴ *General Division decision*, p.8.

⁵ Recording of the General Division hearing held on April 16, 2021.

[16] The Claimant agrees with the Commission's proposed remedy.

[17] For the above-mentioned reasons, and after reviewing the file, I find that the General Division ignored evidence and misapplied the second *Faucher* factor in order to conclude that the Claimant was not available to work.

[18] I am granting the Claimant leave to appeal and allowing his appeal.

CONCLUSION

[19] Leave to appeal is granted. The appeal is allowed.

[20] The Claimant has proven his availability starting from January 20, 2021. The Claimant is to receive regular benefits from January 17 to March 27, 2021, with a disentitlement remaining for January 18-19, 2021. The Claimant will need to serve a one-week waiting period.

[21] The Claimant will be able to receive sickness benefits from March 29, 2021, now that the disentitlement will be modified to end on January 19, 2021.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVES:	P. M., representative of the Applicant Josée Lachance, representative of the Respondent
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