



Citation: *Canada Employment Insurance Commission v LM*, 2021 SST 768

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Angele Fricker  
**Respondent:** L. M.

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**Decision under appeal:** General Division decision dated June 15, 2021  
(GE-21-808)

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**Tribunal member:** Melanie Petrunia  
**Type of hearing:** Teleconference  
**Hearing date:** October 4, 2021  
**Hearing participants:** Appellant's representative  
Respondent  
**Decision date:** December 16 , 2021  
**File number:** AD-21-233

## Decision

[1] The appeal is allowed. The matter is referred back to the General Division for reconsideration.

## Overview

[2] The Respondent, L. M. is the Claimant in this case. He was laid off from his job in March 2020 and applied for regular employment insurance (EI) benefits. At the time, he had a valid work permit that expired in April 2020. He applied for a renewal of the work permit in February of 2020. The Appellant, the Canada Employment Insurance Commission (Commission) decided that his application was in order because he had implied status to work in Canada after applying for a renewal of his work permit.

[3] The Claimant returned to work in July 2020 and was again laid off due to the Covid-19 pandemic in February 2021. A new claim was established. The Commission asked the Claimant for a copy of his work permit and was told it had not been issued yet. The Commission denied the claim for benefits because the Claimant did not provide a valid employment authorization. The Claimant was considered not available for work in Canada as of February 7, 2021.

[4] The Claimant successfully appealed the Commission's decision to the Tribunal's General Division. The General Division decided that the Claimant was able to work in Canada under implied status since his application to renew his work permit in February 2020. It found that the Claimant was available for work.

[5] The Commission is appealing the General Division decision to the Tribunal's Appeal Division. It argues that the General Division based its decision on an important error about the facts of the case and made an error of law.

[6] I have decided that the General Division erred in law by ignoring relevant facts and contradictory evidence. I am allowing the appeal and sending the matter back to the General Division to reconsider whether the Claimant received a valid work permit, or other decision, in response to his application to renew filed in February 2020.

## Issues

[7] I have focused on the following issues:

- a) Did the General Division err in law when it decided that the Claimant was authorized to work in Canada under implied status as of February 7, 2021?
- b) If so, how should the error be fixed?

## Analysis

[8] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:<sup>1</sup>

- acted unfairly;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

## Background

[9] The Claimant was first laid off from his job in March 2020 and applied for EI benefits.<sup>2</sup> The Claimant provided a receipt for payment of his application for renewal of his work permit dated February 18, 2020. The work permit expired in April 2020.<sup>3</sup>

[10] The Commission accepted that the Claimant was authorized to work in Canada under implied status because he had applied to renew the work permit and asked him to

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<sup>1</sup> The relevant errors, formally known as “grounds of appeal,” are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>2</sup> GD3-7

<sup>3</sup> GD3-60

provide a copy of the new work permit when he received it.<sup>4</sup> The Claimant did not provide a copy of the new work permit.

[11] The Claimant returned to work with the same employer in July 2020 but was laid off again due to the Covid-19 pandemic in February 2021.<sup>5</sup> A new claim for benefits was established. On March 22, 2021, he Claimant was asked, again, to provide a copy of the work permit that he had applied to renew one year earlier, in February 2020.

[12] The Claimant provided the same receipt dated February 18, 2020. In a conversation with a Service Canada agent on March 24, 2021, the Claimant was asked again for a copy of his new work permit. He said that it wasn't yet issued.<sup>6</sup>

[13] The Claimant provided the Commission with a copy of an application to renew his work permit dated December 18, 2020. He also submitted copies of emails from 2011 which discuss implied status.

[14] In a letter to Service Canada received on March 29, 2021, the Claimant states that he is providing the long-awaited work permit receipt and approved payment. He says that the document itself will be arriving in a couple of weeks according to IRCC CPC in Edmonton.<sup>7</sup> Attached to this letter is a copy of a receipt for payment dated March 29, 2021.<sup>8</sup>

[15] Commission denied the Claimant's claim for benefits because he did not have a valid employment authorization and was not considered available for work in Canada. The Claimant requested a reconsideration and the Commission maintained its decision.

[16] Claimant successfully appealed to the Tribunal's General Division.

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<sup>4</sup> GD3-26

<sup>5</sup> GD3-29

<sup>6</sup> GD3-32

<sup>7</sup> GD3-43

<sup>8</sup> GD3-44 to 45

– **The General Division decision**

[17] The General Division decided that the Claimant was authorized to work in Canada under implied status. In making this decision, it considered that the Claimant had applied to renew his work permit in February 2020, before it expired in April 2020.<sup>9</sup>

[18] The General Division discusses the Claimant's application to renew his work permit in February 2020 and considered the Commission's concerns that the Claimant's name was not on the receipt. The General Division accepted the Claimant's testimony that the fee was paid by his lawyer and his name is on the receipt.<sup>10</sup>

[19] The General Division also considered the Claimant's work permit which had expired in April 2020 and documents provided by the Claimant which describe implied status. It found that the Claimant applied to renew his permit in February 2020 before it expired and therefore he was under implied status for the period that the Commission had denied him benefits, from February 7, 2021.

**The General Division ignored relevant evidence**

[20] The General Division decided that the Claimant was available for work in February 2021, because he had implied status, as of the date of his application to renew his work permit on February 18, 2020.

[21] The General Division noted that the Claimant had applied for a renewal of his work permit in February 2020 and found that he did not receive the new permit because of a change in housing. This finding is inconsistent with relevant evidence which the General Division did not address.

[22] The Claimant provided a copy of an application to renew his work payment, dated December 18, 2020. This application is part of the record that was before the General Division and is the only application that the Claimant provided. The form asks for a current mailing address and states "All correspondence will go to this address unless you indicate your e-mail address below. Indicating an e-mail address will

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<sup>9</sup> General Division decision at para 29.

<sup>10</sup> General Division decision at para 24.

authorize all correspondence, including file and personal information, to be sent to the e-mail address you specify.”<sup>11</sup> The claimant did not provide a mailing address but he did provide an email address. The General Division did not ask the Claimant which mailing address he expected to receive the new work permit at, or if he expected to receive it by email. This evidence is relevant to the issue of whether or not the Claimant still had implied status in February 2021.

[23] The General Division also did not consider in its decision the Claimant’s receipt for an application to Immigration, Refugees and Citizenship Canada (IRCC) dated March 29, 2021. The Claimant was asked about the receipt but he did not clearly answer why this fee was paid on that date. His testimony suggests it was related to something he expected a refund for in 2017.<sup>12</sup>

[24] In notes from a call with a Service Canada agent the Claimant said that this fee was paid to renew the April 2020 permit that was due to expire in March 2021.<sup>13</sup> This is presumably the permit that he did not receive. However, it is not clear from the evidence whether the Claimant submitted another application to renew his work permit even though he did not receive a response to the earlier application. It is also not clear from the evidence what the reason for the March 29, 2021 payment was.

[25] The Commission had also referenced the current processing times in their written submissions before the General Division. As of March 29, 2021, the date on the Claimant’s second receipt, the processing time for an application to renew a work permit was 50 days.<sup>14</sup> The General Division did not consider this evidence or ask the Claimant whether or not he followed up with respect to his application.

[26] The Commission had accepted the Claimant’s implied status for his period of unemployment from February 2020 to July 2020 on the basis of the receipt he had provided dated February 18, 2020. This receipt suggested he had applied to renew his work permit expiring in April 2020. When he was laid off again in February 2021, the

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<sup>11</sup> GD3-39

<sup>12</sup> Recording of General Division hearing at 27:25 to 28:28.

<sup>13</sup> GD3-62

<sup>14</sup> GD3-46

Commission asked for a copy of his work permit. The Claimant stated that he hadn't received it and it may have been because he had moved.

[27] The General Division did not ask the Claimant if he had made any inquiries with IRCC in the year since he had applied for a renewal. This information is relevant to whether or not the Claimant's application was still pending, and therefore he still had implied status. Implied status only continues until a decision has been made on the application.

[28] The evidence before the General Division suggests that the Claimant did not provide a mailing address with his application to renew his work permit, and communication may have been by email. This is inconsistent with the finding that the Claimant did not receive the updated work permit because of a change in housing.

[29] By not considering all the relevant facts and not resolving the inconsistent evidence that was before it, the General Division committed an error of law.<sup>15</sup>

[30] Having found that the General Division erred, I do not need to consider the Commission's other arguments.

## **Remedy**

[31] I have listened to the hearing before the General Division. The General Division did not ask whether the Claimant made any inquiries about the status of his application to renew his work permit expiring in April 2020. He was not asked about the fact that the only application form he provided suggests that the Claimant might have received the new permit by email.

[32] This information is relevant to whether or not the Claimant had a valid work permit or was on implied status as of February 7, 2021. In the circumstances, I am sending the matter back to the General Division for reconsideration of the Claimant's

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<sup>15</sup> *Bellefleur v Canada*, 2008 FCA 13; *Parks v Canada*, A-321-97.

availability for work in Canada from February 7, 2021. The Claimant will have an opportunity to fully present his case including any relevant new evidence.

## **Conclusion**

[33] The appeal is allowed. The General Division made an error of law by ignoring relevant evidence. The matter is referred back to the General Division for reconsideration.

Melanie Petrunia  
Member, Appeal Division