



Citation: *Canada Employment Insurance Commission v BM*, 2021 SST 775

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Louise Laviolette  
**Respondent:** B. M.

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**Decision under appeal:** General Division decision dated October 4, 2021  
(GE-21-1660)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** Teleconference  
**Hearing date:** December 20, 2021  
**Hearing participants:** Appellant's representative  
Respondent

**Decision date:** December 21, 2021  
**File number:** AD-21-347

## Decision

[1] The appeal is allowed.

## Overview

[2] The Appellant, the Canada Employment Insurance Commission (Commission), decided that the Respondent (Claimant) was disentitled from receiving EI regular benefits from January 4, 2021, because he was not available for work.

[3] The Commission determined that the Claimant was not available for work because his student visa restricted his availability to 20 hours per week. It determined that although he was legally able to work full time from April 30, 2021, he was not making enough efforts to search for work, or looking for suitable work. After reconsideration, the Claimant appealed the Commission's decision to the General Division.

[4] The General Division found that the Claimant demonstrated that he was available for work within the meaning of the law from April 30, 2021, to September 6, 2021. It found that he was not available for work from January 5, 2021, to April 29, 2021.

[5] The Appeal Division granted the Commission leave to appeal of the General Division's decision. It submits that the General Division erred in fact or in law in its interpretation of section 18(1) (a) of the *Employment Insurance Act (EI Act)*.

[6] I must decide whether the General Division made an error in fact or in law in its interpretation of section 18(1) (a) of the EI Act when it concluded that the Claimant was available for work from April 30, to September 6, 2021.

[7] I am allowing the Commission's appeal.

## Issue

[8] Did the General Division make an error in fact or in law in its interpretation of section 18(1) (a) of the EI Act when it concluded that the Claimant was available for work from April 30, to September 6, 2021?

## Analysis

### Appeal Division's mandate

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

[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.<sup>2</sup>

[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.

**Did the General Division make an error in fact or in law in its interpretation of section 18(1) (a) of the EI Act when it concluded that the Claimant was available for work from April 30, to September 6, 2021?**

[12] The Commission submits that the General Division ignored the Claimant's admission during the hearing that he did not look for work after May 27, 2021.

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

<sup>2</sup> *Idem*.

[13] I proceeded to listen to the General Division recording. The Claimant does testify that he did not look for work after May 27, 2021.<sup>3</sup> Without explaining why, the General Division set aside the Claimant's testimony.<sup>4</sup>

[14] I am therefore justified to intervene.

## **Remedy**

[15] Considering that the parties had the opportunity to present their case before the General Division, I will render the decision that should have been given by the General Division.<sup>5</sup>

[16] The Commission submits that the Claimant was available for work only from April 30 to May 27, 2021.

[17] The Claimant agrees with the Commission's representations that he was available for work only for that period because he stopped looking for work after May 27, 2021.

[18] The law states that claimants are not entitled to be paid benefits for a working day in a benefit period for which they fail to prove that on that day they were capable of, and available for work and unable to obtain suitable employment.

[19] I am therefore allowing the Commission's appeal.

## **Conclusion**

[20] The appeal is allowed.

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<sup>3</sup> General Division recording of hearing: 17:45.

<sup>4</sup> *Bellefleur v Canada (Attorney general)*, 2008 FCA 13.

<sup>5</sup> Pursuant to section 59(1) of the DESD Act.

[21] The Claimant was available for work under the law from April 30, to May 27, 2021, because he stopped looking for work after May 27, 2021.

Pierre Lafontaine  
Member, Appeal Division