Citation: *GP v Canada Employment Insurance Commission*, 2021 SST 791

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	G. P.
Representative:	Isaac Won
Respondent:	Canada Employment Insurance Commission
Representative:	Josée Lachance

Decision under appeal:	General Division decision dated June 30, 2021 (GE-21-857)

Tribunal member:	Pierre Lafontaine
Type of hearing:	Videoconference
Hearing date:	November 30, 2021
Hearing participants:	Appellant Appellant's representative Respondent's representative Added Party's representative
Decision date:	December 29, 2021
File number:	AD-21-263

Decision

[1] The appeal is allowed. The file returns to the General Division to decide whether the Commission had the power to disentitle retroactively the Appellant (Claimant) and if so, whether the Commission should act and acted judicially when deciding to reconsider the Claimant's claim.

Overview

[2] The Claimant was a student on a study permit. He applied for regular EI benefits and collected benefits for several months. The Respondent (Commission) later reviewed his entitlement to benefits. The Commission decided that the Claimant was not available for work from October 5, 2020, to February 26, 2021, because he was a full-time student and because his study permit would not let him work more than 20 hours a week. The Commission asked the Claimant to repay the benefits he had received. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant wanted to work. It found that he made reasonable efforts to find a job. However, it found that the Claimant's study permit set a personal condition that unduly affected his chances of returning to the labour market. The General Division concluded that the Claimant was not available for work until March 1st, 2021.

[4] The Appeal Division granted the Claimant leave to appeal of the General Division's decision. He submits that the General Division did not decide an issue that it should have decided. The Claimant submits that the General Division did not consider whether the Commission had the power to reconsider the claim and if so, whether it acted judicially under section 52 of the *Employment Insurance Act* (EI Act) when it retroactively changed its initial decision to grant him benefits.

[5] I must decide whether the General Division made an error by not deciding an issue that it should have decided.

[6] I am allowing the Claimant's appeal. The file returns to the General Division to decide whether the Commission had the power to disentitle retroactively the Claimant and if so, whether the Commission should act and acted judicially when deciding to reconsider the Claimant's claim.

Issue

[7] Did the General Division make an error by not deciding whether the Commission had the power to disentitle retroactively the Claimant and if so, whether the Commission should act and acted judicially when deciding to reconsider the claim?

Analysis

Appeal Division's mandate

[8] 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* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.[1]

[9] 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]

[10] 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.

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[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 by not deciding whether the Commission had the power to disentitle retroactively the Claimant and if so, whether the Commission should act and acted judicially when deciding to reconsider the claim?

[11] The General Division found that the Claimant wanted to work and that he made reasonable efforts to find a job but that his study permit was a personal condition that unduly affected his chances of returning to the labour market. The General Division concluded that the Claimant was not available for work until March 1st, 2021.

[12] In appeal, the Claimant does not dispute the General Division's decision on the issue of availability. He submits that the General Division did not consider whether the Commission had the power to disentitle him retroactively and if so, whether it acted judicially under section 52 of the EI Act when it retroactively changed its initial decision to grant him benefits.

[13] The Claimant submits that the Commission accepted his application based on accurate and complete information he provided from the beginning of the claim and nothing changed during the relevant period. He submits that the Commission could not change a decision of this type without new facts.

[14] In support of his position, the Claimant refers to Umpire decisions that found that the Commission could not consider the same facts anew and modify or annul its prior decision, so as to retroactively affect the Claimant's acquired rights.[3]

[15] The Claimants submits that the Commission knew all the facts from the start. It therefore could not go back on its assessment of his availability. He submits that the Commission's position that it exercised its power under section 153.161 of the EI Act to "verify" that the Claimant was capable of and available

[3] CUB 37680A, CUB 17341, CUB 5664, CUB 4262.

for work is flawed since it did nothing more than obtain information that it already had.

[16] The Commission's position is that the General Division did not err when it did not consider if the Commission acted judicially under section 52 of the EI Act. The Commission submits that since the claim was made effective as of October 4, 2020, it disentitled the Claimant pursuant to sections 153.161 and 18 of the EI Act during the period for which the Interim Orders were in force.

[17] I note that during the General Division hearing, the Claimant did not specifically raise these issues. However, he repeatedly expressed his frustration that the Commission, knowing all the facts from the start, had changed its mind about his entitlement to benefits after first deciding to pay him for six months.

[18] The General Division found that it did not have the authority to fix the Claimant's situation and urged the Commission to follow its reconsideration policy and change its decision to disentitle the Claimant retroactively.[4]

[19] I find that the General Division's jurisdiction required that it consider whether the Commission had the power to disentitle retroactively the Claimant and if so, whether the Commission should act and acted judicially when deciding to reconsider the claim. It did not do so.

[20] I am therefore justified to intervene.

Remedy

[21] I am of the view that the issues whether the Commission had the power to disentitle retroactively the Claimant and if so, whether the Commission should act and acted judicially when deciding to reconsider the claim, were not properly addressed and debated by the parties before the General Division because it

[4] See General Division decision, para. 54

refused to exercise its jurisdiction. I therefore cannot render the decision that the General Division should have given.[5]

[22] I have no choice but to return the file to the General Division in order that it consider these issues as required by its jurisdiction.

Conclusion

[23] The appeal is allowed. The file returns to the General Division to decide whether the Commission had the power to disentitle retroactively the Claimant and if so, whether the Commission should act and acted judicially when deciding to reconsider the Claimant's claim.

Pierre Lafontaine
Member, Appeal Division

[5] See section 59(1) of the DESD Act.