



Citation: *BL v Canada Employment Insurance Commission*, 2022 SST 88

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: B. L.

Respondent: Canada Employment Insurance Commission
Representative: Melanie Allen

Decision under appeal: General Division decision dated October 18, 2021
(GE-21-1656)

Tribunal member: Melanie Petrunia

Type of hearing: On the Record

Decision date: February 15, 2022

File number: AD-21-353

Decision

[1] The appeal is allowed. The matter will return to the General Division for reconsideration.

Overview

[2] The Appellant, B. L. (Claimant), applied for regular employment insurance (EI) benefits after leaving her job.

[3] The Commission determined the Claimant was disqualified from receiving benefits because she voluntarily left (or chose to quit) her job, without just cause. It also determined she was disentitled from receiving EI benefits because she did not show she met the availability requirements.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division allowed the Claimant's appeal in part. It found that she had just cause for leaving her job and was not disqualified from receiving benefits for that reason. It also decided that the Claimant had not shown that she meets the availability requirements. The General Division found that the Claimant had not rebutted the presumption that she was not available while a full time student and had not proven her availability for work.

[5] The Claimant is now appealing the General Division decision to the Appeal Division. I am allowing the appeal. The General Division based its decision on an important error of fact. I am returning the matter to the General Division for reconsideration.

The parties agree on the outcome of the appeal

[6] In its written submissions, the Commission acknowledged that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. The Commission argues that the record is incomplete and the matter should be returned to the General Division

for a new hearing. The Claimant agrees with the Commission. For the reasons set out below, I agree with the parties.

Issue

[7] Did the General Division base its decision on an important error of fact?

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:¹

- failed to provide a fair process;
- 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.

The General Division based its decision on an important error of fact

[9] In its decision, the General Division found that the Claimant had not rebutted the presumption that she was not available for work while attending university full time. It found that the Claimant's did not prove that she had a history of working full-time while attending university.²

[10] The General Division notes in its decision that the Claimant stated that she was successful at working while taking two online courses when she first started university. It also states the Claimant dropped out of school in May 2020 when she worked while trying to complete three online courses.³ The General Division relied on these facts in

¹ 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).

² General Division decision at para 57.

³ General Division decision at para 57.

deciding that the Claimant did not rebut the presumption that she was not available for work.

[11] Later in its decision, the General Division discusses the Claimant's evidence that two courses is considered full-time at her university. The Claimant also states in her reasons for the appeal that she dropped out of school in May 2020 due to a potentially life-threatening eviction notice.⁴ This is consistent with her testimony before the General Division.

[12] When finding that the Claimant did not prove she had a history of working full-time while attending university, the General Division does not discuss the Claimant's evidence that the two courses she successfully completed while working were considered full-time at her university. The General Division also does not mention the Claimant's evidence concerning why she dropped out of school during a later semester, when she was taking three courses. This evidence contradicts the General Divisions findings.

[13] The General Division found that the Claimant enrolled in three courses in July 2021. The Claimant's testimony, however, was that she took two courses at that time.⁵ The General Division restated that the Claimant had a history of dropping out when working and taking three courses.⁶ This finding both ignored the Claimant's evidence that there were other reasons for dropping out, and was contradicted by the testimony that she was only enrolled in two courses.

[14] The Claimant confirmed in her testimony that she is available to work 40 hours per week while going to school. The Claimant also does not appear to have stated that she is restricting her job search efforts to jobs that allow her to work from home, contrary to the General Division's finding.⁷

⁴ General Division decision at para 68.

⁵ Audio recording of General Division hearing at 1:03.

⁶ General Division decision at para 70.

⁷ General Division decision at para 74.

[15] The General Division erred in failing to address the Claimant's evidence that contradicted its findings. The General Division based its decision on erroneous findings of fact made without regard for the material before it. The General Division must justify its determinations and cannot ignore evidence.⁸

[16] As I have found that the General Division erred, I do not have to address the balance of the Claimant's arguments.

Remedy

[17] The Commission argues that the record is not complete and the matter should be returned to the General Division for a new hearing. The Claimant agrees with the Commission.

[18] I have reviewed the record and find that it is incomplete. This is not an appropriate case for me to make the decision that the General Division should have made. In the Claimant's Notice of Appeal, she submitted new information concerning her job search efforts, which I am unable to consider. At a new hearing before the General Division, the Claimant will have the opportunity to present this evidence, and clarify her chronology of events.

[19] I am returning the matter to the General Division to allow the Claimant the opportunity to fully present her case.

Conclusion

[20] The appeal is allowed. The General Division based its decision on an erroneous finding of fact made without regard to the material before it. The matter returns to the General Division for a new hearing.

Melanie Petrunia
Member, Appeal Division

⁸ *Bellefleur v. Canada*, 2008 FCA 13; *Parks v. Canada*, A-321-97