



Citation: *Canada Employment Insurance Commission v LM*, 2021 SST 967

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Angèle Fricker
Respondent: L. M.
Representative: J. M.

Decision under appeal: General Division decision dated August 18, 2021
(GE-20-1133)

Tribunal member: Pierre Lafontaine

Type of hearing: Videoconference
Hearing date: November 30, 2021
Hearing participants: Appellant's representative
Respondent
Respondent's representative

Decision date: December 8, 2021
File number: AD-21-288

Decision

[1] The appeal is allowed. The file returns to the General Division for reconsideration.

Overview

[2] Each spring, the Respondent's (Claimant) employer lays off a portion of the workforce. The collective agreement in the workplace allows employees to elect to be laid off in order of seniority when the lay-off is for a period of less than five months. The Claimant accepted to be laid off temporarily by her employer in 2017 and 2018. She received regular EI benefits during these periods.

[3] The Appellant (Commission) investigated the Claimant's request for EI benefits in 2017 and 2018. The Commission decided that the Claimant voluntarily left the workplace on a leave of absence during the periods where she was laid off. It disentitled the Claimant from receiving benefits during those two periods. This resulted in an overpayment. The Claimant appealed the Commission's reconsideration decision to the General Division.

[4] The General Division found that the Claimant voluntary left her employment but that she had no reasonable alternative to leaving when she did. It concluded that the Claimant had just cause to voluntary take leave of absences in 2017 and 2018.

[5] The Appeal Division granted the Commission leave to appeal. It submits that the General Division ignored the employer's contradictory evidence and therefore made an error in law.

[6] I must decide whether the General Division ignored the employer's contradictory evidence and therefore made an error of law.

[7] I am allowing the Commission's appeal. The file returns to the General Division for a new hearing.

Issue

[8] Did the General Division ignore the employer's contradictory evidence and therefore make an error of law?

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.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.

Did the General Division ignore the employer's contradictory evidence and therefore make an error of law?

[12] The General Division found that the Claimant voluntarily took a leave of absence from the workplace from April 17, 2017, until July 4, 2017, and from April 27, 2018, until July 6, 2018. However, having regard to all of the circumstances, it found that the Claimant had just cause to leave temporarily because she had no reasonable alternative to leaving.

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

² *Idem*.

[13] The Commission submits that the General Division ignored the employer's contradictory evidence and therefore made an error in law.

[14] Before the General Division, the Claimant stated that as a lead hand she would have been laid off even if she had stayed because there simply was no work within her classification. She also stated that in the lower classification, she would have been doing a very different job at reduced hours and reduced pay.

[15] During an interview, the employer declared that the Claimant could have continued in her position of lead hand. It further stated that there were junior lead hands as well during the period of time that the Claimant was laid off.

[16] It is well established that the General Division must justify the conclusions it renders. When faced with contradictory evidence, it cannot disregard it; it must consider it. If it decides that the evidence should be dismissed or assigned little or no weight at all, it must explain the reasons for the decision, failing which there is a risk that its decision will be marred by an error of law or that it will be qualified as capricious.

[17] I find that the General Division did not explain why it disregarded the employer's contradictory evidence. By not considering all the relevant facts and not resolving the contradictory evidence that was before it, the General Division committed an error of law.³

[18] I am therefore justified to intervene.

Remedy

[19] In order to decide the appropriate remedy, I proceeded to listen to the recording of the General Division hearing.

³ *Bellefleur v Canada*, 2008 FCA 13; *Parks v Canada*, A-321-97.

[20] I note that the General Division did not ask the Claimant to respond to the employer's contradictory statements. Therefore, the Claimant did not have the opportunity to fully present her case before the General Division.

[21] For these reasons, I cannot render the decision the General Division should have rendered. I have no choice but to return the file to the General Division for reconsideration.

Conclusion

[22] The appeal is allowed. The file returns to the General Division for reconsideration.

Pierre Lafontaine
Member, Appeal Division