



Citation: *Canada Employment Insurance Commission v VE*, 2022 SST 305

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative:

Respondent: V. E.

Decision under appeal: General Division decision dated October 1, 2021
(GE-21-1576)

Tribunal member: Melanie Petrunia

Type of hearing: Teleconference

Hearing date: February 10, 2022

Hearing participants: Appellant's representative
Respondent

Decision date: April 18, 2022

File number: AD-21-346

Decision

[1] The appeal is dismissed.

Overview

[2] The Respondent, V. E. (Claimant), was receiving regular Employment Insurance (EI) benefits beginning in September 2020. The Appellant, the Canada Employment Insurance Commission (Commission), later learned that the Claimant was enrolled in university full-time while receiving benefits.

[3] The Commission decided that the Claimant was disentitled from being paid EI benefits from September 28, 2020, to April 28, 2021, because she was taking a training course on her own initiative and had not proven that she was available for work.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division found that the Claimant proved that she was available for work while attending university full time. It decided that she was not disentitled from receiving regular EI benefits.

[5] The Commission argues that the General Division made an error of law and based its decision on an important error of fact.

[6] I am dismissing the appeal. The General Division did not make an error of law, or base its decision on an important mistake about the facts of the case when it decided that the Claimant was available for work.

Issues

[7] The issues in this appeal are:

- a) Did the General Division make an error of law by ignoring the Claimant's statements to a Commission agent?

- b) Did the General Division base its decision on an important error of fact when it decided that there was sufficient evidence of the Claimant's job search efforts?

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 decision

[9] The General Division considered the presumption of non-availability and found that it applied to the Claimant because she was a full-time student.² It then considered the two ways that the presumption can be rebutted.³

[10] The General Division found that the Claimant had rebutted the presumption by showing a history of working full time while attending school full time. The General Division took into consideration a spreadsheet prepared by the Claimant, which showed that she worked full-time hours, at two part-time jobs, while attending university full time in the past.⁴

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 See General Division decision at paragraph 18.

³ See General Division decision at paragraph 20.

⁴ See General Division decision at paragraph 22.

[11] After finding that the Claimant had rebutted the presumption on non-availability, the General Division considered the three main factors for assessing availability:

- A desire to go back to work as soon as a suitable job is available;
- Demonstrating this desire by making efforts to find a suitable job; and
- Not setting personal conditions that might unduly limit chances of returning to the labour market.⁵

[12] With respect to the Claimant's efforts to find a suitable job, the General Division listed all of the activities that the Claimant engaged in.⁶ It accepted the Claimant's testimony as sincere and direct and determined that the Claimant did all she could to try to find a job.⁷

[13] The General Division found that the Claimant set some personal conditions but that these conditions would not have unduly limited her chances of returning to the labour market.⁸

[14] The General Division states that it agreed to accept post-hearing documents from the Claimant concerning her job search efforts.⁹ It shared these documents with the Commission and received further submissions. These records did not show any job search efforts during the period of disentitlement. The General Division found that the Claimant's job search efforts after the period of disentitlement were not relevant.¹⁰

The General Division did not make an error of law

[15] The Commission argues that the General Division erred in law by misapplying the second and third factors used to assess availability: that the Claimant made sufficient efforts to find suitable employment and that she did not set personal

⁵ See General Division decision at paragraph 26.

⁶ See General Division decision at paragraph 31.

⁷ See General Division decision at paragraph 32.

⁸ See General Division decision at paragraph 35.

⁹ These documents are at GD5.

¹⁰ See General Division decision at paragraph 8.

conditions that would have unduly limited her chances of going back to work because of her schooling.

[16] The Commission argues that General Division erred by ignoring the Claimant's statements to a Commission agent. It says that the Claimant told the Commission that she was available and would have accepted work when she was not taking classes.¹¹

[17] The General Division reviewed all of the evidence presented by the Claimant at the hearing. It states that the Claimant reviewed her school requirements in detail and compared her school schedule in 2019-2020 to her schedule in 2020-2021 during the hearing. The Claimant testified that she was available more hours during the period in question that she had been in 2019-2020 when she was working full-time hours.¹²

[18] The General Division relied on the Claimant's evidence at the hearing more than what she had told the Commission's agent. The General Division explained its reasons for preferring this evidence.¹³

[19] The General Division noted that the claimant had previously successfully worked full-time while attending university. It also considered that most of the Claimant's courses were recorded, allowing her to attend at her convenience. The General Division notes the few hours per week when the Claimant was required to be in class and found that she did not unduly limit her chances of going back to work.¹⁴

[20] The General Division also found that the Claimant was available the same number of hours as she had worked before and that she did not have unreasonable salary expectations.¹⁵ It considered all of the cases that the Commission is relying on and distinguished those cases from the Claimant's situation.¹⁶

¹¹ See AD4-5 where the Commission refers to the Claimant's conversation recorded at GD3-99.

¹² See General Division decision at paragraph 36.

¹³ See General Division decision at paragraphs 36 and 39.

¹⁴ See General Division decision at paragraph 37.

¹⁵ See General Division decision at paragraph 40.

¹⁶ See General Division decision at paragraph 42.

[21] The General Division considered the relevant sections of the law, and the principles applicable to questions of availability. The General Division took into consideration all relevant evidence. I find that the General Division considered the evidence that the Commission is arguing it ignored. The General Division explained its reasons for preferring the Claimant's testimony where it contradicted what she had told the Commission's agents.

[22] The General Division did not make an error of law by ignoring evidence of the Claimant's statements to the Commission, or by misapplying the second and third factors used to assess availability.

The General Division did not base its decision on an important mistake about the facts of the case

[23] The Commission argues that the General Division ignored the evidence of the Claimant's job search efforts that was submitted after the hearing.¹⁷ It says that the General Division based its decision that the Claimant had made enough efforts to find a job on an erroneous finding of fact because the job search documents the Claimant provided did not show any efforts during the relevant period.

[24] The Commission says that the Claimant's job search records did not show proof of any job search activity between September 2020 and April 28, 2021, when she was attending university full-time. The Commission argues that the General Division ignored this evidence. It says that the General Division would not have found that that Claimant made sufficient efforts to find work if it had taken this evidence into consideration.

[25] The General Division outlines all of the efforts made by the Claimant that it took into consideration. It notes that it did not take consider the job search efforts that the Claimant made after the period of disentitlement as outlined in the post-hearing documents.

[26] I disagree with the Commission that there was no evidence to support the General Division's findings. The General Division explained why it did not consider the

¹⁷ GD5

post-hearing documents and it accepted the Claimant's testimony in which she explained the efforts that she made.

[27] The General Division did not base its decision on an important error of fact when it decided that the Claimant made enough efforts to find suitable employment.

[28] I find that the Commission is asking me to reweigh the evidence. Or it is challenging the application of settled legal principles to the facts of this case. I cannot consider these errors.¹⁸

Conclusion

[29] The appeal is dismissed. The General Division did not make any errors of law or base its decision on an important factual error.

Melanie Petrunia
Member, Appeal Division

¹⁸ See paragraphs 7 to 11 of the Federal Court of Appeal's decision in *Garvey v Canada (Attorney General)*, 2018 FCA 118.