



Citation: *GK v Canada Employment Insurance Commission*, 2022 SST 436

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: G. K.

Respondent: Canada Employment Insurance Commission
Representative: Josée Lachance

Decision under appeal: General Division decision dated January 28, 2022
(GE-21-2555)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference

Hearing date: May 31, 2022

Hearing participants: Appellant
Respondent's representative

Decision date: June 1, 2022

File number: AD-22-119

Decision

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

Overview

[2] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant was disentitled from receiving Employment Insurance (EI) regular benefits from December 13, 2020, to April 30, 2021, and from September 8, 2021, onwards, because he was taking a training course on his own initiative, and had not proven that he was available for work. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant did not show a desire to return to the labour market as soon as possible and that he made no efforts to find a suitable job. It further found that the Claimant's school attendance unduly limited his chances of returning to work. The General Division concluded that the Claimant did not show that he was capable of, and available for work but unable to find a suitable job.

[4] The Appeal Division granted the Claimant leave to appeal of the General Division's decision only on the issue of whether the General Division considered all issues before it.

[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 to benefits and if so, whether the Commission should act and acted judicially when deciding to reconsider the claim.

Issue

[7] Did the General Division make an error by not deciding whether the Commission had the power to disentitle retroactively the Claimant to benefits 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.

Did the General Division make an error by not deciding whether the Commission had the power to disentitle retroactively the Claimant to

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

² *Idem*.

benefits and if so, whether the Commission should act and acted judicially when deciding to reconsider the claim?

[11] First, I must reiterate that, in my leave to appeal decision, I found no reviewable error made by the General Division on the issue of the Claimant's availability. I granted leave to appeal solely on the issue of whether the General Division made an error by not deciding an issue that it should have decided.

[12] During the hearing, the Claimant raised the issue whether the Commission had exercised its discretion judicially when it decided to review his claim considering that he had truthfully declared his school situation from the start.³ The Claimant also raised this issue during the reconsideration process.⁴

[13] The Commission submits that it did provide its position to the General Division on that issue. However, the General Division did not consider it. Therefore, the Commission agrees that the General Division made an error by not deciding an issue that was before it.

[14] I am of the view 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.⁵

[15] I am therefore justified to intervene.

Remedy

[16] I am of the view that the issue of whether the Commission had the power to disentitle retroactively the Claimant to benefits and if so, whether the Commission should act and acted judicially when deciding to reconsider the claim, was not properly addressed by the parties before the General Division.

³ Recording of General Division hearing: 14:15.

⁴ See GD3-39.

⁵ Sections 52 and 153.161(2) of the EI Act.

[17] I therefore cannot render the decision that the General Division should have given.⁶ I have no other choice but to return the file to the General Division in order that it consider the issue as required by its jurisdiction.

Conclusion

[18] The appeal is allowed.

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

Pierre Lafontaine
Member, Appeal Division

⁶ See section 59(1) of the DESD Act.