Citation: *NM v Canada Employment Insurance Commission*, 2022 SST 428

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	N. M.
Representative:	G. A.
Respondent:	Canada Employment Insurance Commission
Representative:	Julie Villeneuve

Decision under appeal:	General Division decision dated November 12, 2021 (GE-21-1848)

Tribunal member:	Pierre Lafontaine
Type of hearing:	Teleconference
Hearing date:	March 3, 2022
Hearing participants:	Appellant Appellant's representative Respondent's representative
Decision date:	May 30, 2022
File number:	AD-21-391

Decision

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

Overview

[2] The Appellant (Claimant) applied for Employment Insurance (EI) benefits. The Respondent (Commission) subsequently learned that the Claimant was a full-time student and working part-time. It decided that the Claimant was disentitled from being paid EI benefits while attending his course because he was not available for work. After an unsuccessful reconsideration, the Claimant appealed the Commission's reconsideration decision to the General Division.

[3] The General Division found that the Claimant was not willing to abandon his course for full-time employment and that he did not demonstrate a desire to return to work through his efforts to find a suitable job. It also found that the Claimant's university course was an obstacle to accepting suitable employment. The General Division concluded that the Claimant was not available for work while in school.

[4] The Appeal Division granted the Claimant leave to appeal of the General Division's decision. He submits that the General Division erred in fact or in law.

[5] I am allowing the appeal. The file returns to the General Division for reconsideration.

Issue

[6] Did the General Division make an error in fact or in law in its interpretation of section 18(1) (a) of the *Employment Insurance Act* (EI Act)?

Analysis

Appeal Division's mandate

[7] 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]

[8] 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]

[9] 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 in fact or in law in its interpretation of section 18(1) (a) of the EI Act?

[10] The Claimant submits that the General Division erred when it made a finding that he was not willing to quit school for full-time work. He puts forward that he testified at the hearing that he was willing to drop school for full-time work.

[11] The General Division found that the Claimant did not answer the following question: Would you be willing to abandon your studies to accept regular full-time employment?

[12] From the Claimant's silence, the General Division inferred that employment was not the Claimant's primary goal during the period of disentitlement. It concluded that the Claimant was not willing to abandon his

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

course for full-time employment and therefore found him not available for work pursuant to section 18(1) (a) of the EI Act.

[13] After listening to the recording of the General Division hearing, I do not find that the Claimant was silent but rather that he never really had the opportunity to answer the question.[3]

[14] I therefore find that the General Division made an error in inferring that the Claimant's silence meant that employment was not his primary goal during the period of disentitlement.

[15] Furthermore, the General Division's role was not to decide whether it was realistic for the Claimant to hold a full-time job while attending university courses but whether his school schedule unduly limited his chances of going back to work.[4]

[16] For these reasons, I find that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner. It also erred in law in its interpretation of the *Faucher* factors to decide the Claimant's availability pursuant to section 18(1) (a) of the EI Act.[5]

Remedy

[17] Considering my above conclusions, it is clear that the parties did not have the opportunity to present their case before the General Division. In these circumstances, I have no choice but to send the file back to the General Division for reconsideration.

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[3] 55:55 of the recording of the General Division hearing.
[4] See paragraphs 50 and 51 of the General Division decision.
[5] *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division