



[TRANSLATION]

Citation: *CP v Canada Employment Insurance Commission*, 2022 SST 926

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** C. P.  
**Representative:** D. Q.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Julie Meilleur

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**Decision under appeal:** General Division decision dated  
March 25, 2022 (GE-22-397)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** Videoconference  
**Hearing date:** September 20, 2022  
**Hearing participant:** Appellant's representative

**Decision date:** September 21, 2022  
**File number:** AD-22-304

## Decision

[1] The Claimant's appeal is allowed.

## Overview

[2] The Appellant (Claimant) applied for sickness benefits. After a fall, her doctor put her off work for five weeks, after which she was to gradually go back to work.

[3] On January 21, 2022, the Respondent (Commission) decided that the Claimant was not available for work as of June 28, 2021, because she was available for only part-time work and was not looking for a job. The Commission also decided that, if it had not been for her injury, she would not have been available for work between June 28, 2021, and July 9, 2021, because she was available for only part-time work.

[4] Before the General Division, the Claimant admitted that she was able to work as of July 4, 2021. She disputed only the Commission's decision about her entitlement to sickness benefits from June 28, 2021, to July 3, 2021. The General Division determined that the Claimant was able to work as of June 28, 2021. It found that, because of this, the Claimant was not entitled to sickness benefits.

[5] The Appeal Division granted the Claimant leave to appeal the General Division decision. The Claimant argues that the General Division made an important error of fact.

[6] I have to decide whether the General Division made an important error of fact when it found that the Claimant was not entitled to sickness benefits as of June 28, 2021.

[7] I am allowing the Claimant's appeal.

## Issue

[8] Did the General Division make an important error of fact when it found that the Claimant was not entitled to sickness benefits as of June 28, 2021?

## Analysis

### Appeal Division's mandate

[9] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.<sup>1</sup>

[10] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or 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 important error of fact when it found that the Claimant was not entitled to sickness benefits as of June 28, 2021?**

[12] Before the General Division, the Claimant admitted that she was able to work as of July 4, 2021. She disputed only the Commission's decision about her entitlement to sickness benefits from June 28, 2021, to July 3, 2021.

[13] The General Division found that the Claimant had not shown that she was unable to work as of June 28, 2021. It found that, because of this, the Claimant was not entitled to sickness benefits.

[14] The Claimant argues that the General Division based its decision on an important error of fact.

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

[15] Specifically, the Claimant argues that the General Division made an important error of fact because the doctor's handwritten note indicates that her partial disability would continue until July 3, 2021.

[16] The Commission is of the view that the General Division did, in fact, make an error of fact in finding as it did. In its view, the doctor's handwritten note explains that the Claimant's partial disability would continue until July 3, 2021.

[17] I agree with the parties. The doctor's handwritten note says that the Claimant's partial disability would continue for two weeks as of June 20, 2021, that is, until July 3, 2021.<sup>2</sup>

[18] This is an important error of fact that justifies my intervention.

## **Remedy**

[19] Considering that the parties had the opportunity to present their case before the General Division, I will give the decision that the General Division should have given.<sup>3</sup>

[20] The Claimant is not claiming sickness benefits or regular benefits as of July 4, 2021.

[21] The Claimant argues that the evidence shows that her partial disability continued until July 3, 2021. She says that she is entitled to sickness benefits from June 28 to July 3, 2021.

[22] Since the doctor's handwritten note says that the Claimant's partial disability would continue for two weeks as of June 20, 2021, that is, until July 3, 2021, the Commission finds that the Claimant was entitled to sickness benefits for the week of June 27 to July 3, 2021.

[23] For the above reasons, I am allowing the Claimant's appeal.

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<sup>2</sup> See GD3-18.

<sup>3</sup> In accordance with the powers given to the Appeal Division under section 58(1) of the *Department of Employment and Social Development Act*.

## **Conclusion**

[24] The Claimant's appeal is allowed on the issue of sickness benefits.

[25] The Claimant is entitled to sickness benefits for the week of June 27, 2021, to July 3, 2021.

Pierre Lafontaine  
Member, Appeal Division