



Citation: *LH v Canada Employment Insurance Commission*, 2022 SST 1101

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** L. H.  
**Representative:** C. Z.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Rachel Paquette

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**Decision under appeal:** General Division decision dated May 17, 2022  
(GE-22-798)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** Teleconference  
**Hearing date:** October 20, 2022  
**Hearing participants:** Appellant's representative  
Respondent's representative

**Decision date:** October 28, 2022  
**File number:** AD-22-342

## Decision

[1] The appeal is allowed. The file returns to the General Division only to decide 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 not entitled to Employment Insurance (EI) regular benefits from March 28, 2021 to June 23, 2021, and from September 1, 2021 onwards, because she was taking a training course on her own initiative, and had not proven that she 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 noted that the Claimant did not dispute that she was not available for work. She was in school full-time and did not want to interrupt her school for full-time work. The General Division found that the Commission knew that the Claimant was not available for full-time work from the day the Claimant filed her claim. The General Division noted that the Commission has internal policies to address situations where an overpayment occurs as a result of its error. It encouraged the Commission to consider its policies and decide whether they apply to the Claimant's case.

[4] The Appeal Division granted the Claimant leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that the Commission knew that she was a full-time student and not available for full-time work at the time she filed her claim. She should not have to repay the benefits following the Commission's error in approving the claim.

[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 only to decide 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 should act and acted judicially when deciding to reconsider the Claimant's 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.<sup>1</sup>

[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.<sup>2</sup>

[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.

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

<sup>2</sup> *Idem*.

**Did the General Division make an error by not deciding whether the Commission should act and acted judicially when deciding to reconsider the Claimant's claim?**

[11] I granted leave to appeal solely on the ground that the General Division might have made an error by not deciding an issue that it should have decided. There is no reason for me to intervene on the issue of availability.

[12] Throughout the proceedings, the Claimant raised the issue whether the Commission could review her claim considering that she had truthfully declared in good faith her school situation and non-availability from the start of her claim.

[13] Before the General Division, the Commission argued that it reconsidered the Claimant's entitlement to benefits under section 153.161 of the *Employment Insurance Act* (EI Act).<sup>3</sup>

[14] Section 153.161 of the EI Act states that the Commission may, at any point after benefits are paid to a claimant who attends a course, program of instruction or training, verify that the Claimant is entitled to those benefits by requiring proof that they were capable of and available for work on any working day of their benefit period.

[15] The General Division determined that the Commission did have the power to go back to a claimant and request proof of availability retroactively, as stated in section 153.161 of the EI Act. It did not decide whether the Commission should act and acted judicially when deciding to reconsider the claim.

[16] The Commission is of the opinion that the General Division made an error by not deciding an issue that was before it.

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<sup>3</sup> See GD-4-6 to GD4-7.

[17] I am of the view that the General Division's jurisdiction required that it consider whether the Commission should act and acted judicially when deciding to reconsider the Claimant's claim. It did not do so.

[18] I am therefore justified to intervene.

## **Remedy**

[19] I am of the view that the issue of 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. I therefore cannot render the decision that the General Division should have given.<sup>4</sup>

[20] I have no choice but to return the file to the General Division in order that it consider the issue as required by its jurisdiction.

## **Conclusion**

[21] The appeal is allowed.

[22] The file returns to the General Division only to decide whether the Commission should act and acted judicially when deciding to reconsider the Claimant's claim.

Pierre Lafontaine  
Member, Appeal Division

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<sup>4</sup> See section 59(1) of the DESD Act.