



Citation: *KC v Canada Employment Insurance Commission*, 2023 SST 167

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: K. C.

Respondent: Canada Employment Insurance Commission
Representative: Sandy Esch

Decision under appeal: General Division decision dated October 11, 2022
(GE-22-1780)

Tribunal member: Jude Samson

Type of hearing: Videoconference
Hearing date: February 14, 2023
Hearing participants: Appellant
Respondent's representative

Decision date: February 15, 2023
File number: AD-22-781

Decision

[1] K. C. is the Claimant in this appeal. With the agreement of the parties, I'm allowing her appeal and giving the decision the General Division should have given.

[2] The Claimant is considered to have left her job on September 1, 2021. This means that she was eligible for the benefits that she received between June 27, 2021, and August 28, 2021.

Overview

[3] The Claimant had a permanent position working at a school. However, she was laid off at the end of every school year and called back at the start of the next school year.

[4] In June 2021, the Claimant became concerned about the COVID-19 pandemic. So, she applied for her retirement pension, left her permanent position, and signed up as a casual employee instead.

[5] The issue in this appeal is about when the Claimant left her job. The General Division concluded that the Claimant left her job on June 30, 2021, her last day as a permanent employee. If this date is maintained, then the Claimant has to repay the EI benefits that the Canada Employment Insurance Commission (Commission) paid to her in July and August 2021.

[6] However, the parties now agree that the General Division based its decision on an important mistake about the facts of this case. Instead, they say that the Claimant left her job on September 1, 2021, the day when she was scheduled to return to work.

The parties agree on the outcome of the appeal

[7] At the hearing of the appeal, the parties reached an agreement that I would summarize as follows:¹

- The General Division based its decision on an important mistake about the facts of the case when it found that the Claimant left her job on June 30, 2021.
- In the circumstances, I should allow the Claimant's appeal and give the decision the General Division should have given.
- The law considers that the Claimant left her job on September 1, 2021.

I accept the proposed outcome

[8] When the General Division found that the Claimant left her job on June 30, 2021, it overlooked the seasonal nature of the Claimant's work. It was the end of the school year, so the Claimant was about to be laid off regardless. And her work would start up again at the beginning of the next school year.

[9] There's a special section of the law that applies to this situation.² But the General Division didn't apply it. According to that section, when a person refuses to return to work, they are considered to have quit when their work was supposed to start up again. In this case, on September 1, 2021.

[10] So, the General Division based its decision on an important mistake about the facts of the case when it found that the Claimant left her job on June 30, 2021. Viewed differently, the General Division made an error by failing to apply a relevant section of the law.³

¹ The Commission set out its position in document AD3.

² See section 29(b.1)(ii) of the *Employment Insurance Act*.

³ These errors allow me to intervene in this case: see section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[11] In the circumstances, I'll give the decision the General Division should have given.⁴

[12] The Claimant was supposed to return to work on September 1, 2021. So, for the purpose of her EI benefits, that's the day when she's considered to have left her job.

Conclusion

[13] With the agreement of the parties, I'm allowing the Claimant's appeal and giving the decision the General Division should have given. Under the law, the Claimant left her job on September 1, 2021. This means the Claimant was eligible for the benefits that she received between June 27, 2021, and August 28, 2021.

[14] The Tribunal will send a copy of this decision to the Commission to be implemented.

Jude Samson
Member, Appeal Division

⁴ Section 59(1) of the DESD Act gives me this power.