



Citation: *AB v Canada Employment Insurance Commission*, 2023 SST 352

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** A. B.  
**Representative:** Sepideh Khazei

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Josée Lachance

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**Decision under appeal:** General Division decision dated November 18, 2022  
(GE-22-2186)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** Videoconference  
**Hearing date:** March 28, 2023  
**Hearing participants:** Appellant's representative  
Respondent's representative

**Decision date:** March 29, 2023  
**File number:** AD-22-943

## Decision

[1] The appeal is allowed. The file returns to the General Division only to decide whether the Respondent (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 Commission decided that the Claimant was disentitled from receiving Employment Insurance (EI) regular benefits as of June 7, 2021, 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 want to go back to work as soon as he could and that he was not actively looking for employment. The General Division found that the Claimant's school obligations unduly limited his chances of going back to work. It concluded that the Claimant was not available for work under the law. The General Division stated that the law allowed the Commission to review the Claimant's entitlement to benefits.

[4] The Appeal Division granted the Claimant leave to appeal of the General Division's decision. The Claimant submits that the General Division misunderstood the operation of section 153.161 of the *Employment Insurance Act*. The Claimant submits that it does not give the Commission a power to delay or forego making an initial decision, nor does it create a power to change a decision when the verification process reveals no misinformation from a claimant. The Claimant also submits that the General Division did not decide whether the Commission acted judicially when it decided to review his claim.

[5] I must decide whether the General Division made an error by not deciding issues 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.<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 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?**

[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.

[12] I granted leave to appeal solely on the issue of whether the General Division made an error by not deciding issues that it should have decided. Furthermore, the Claimant is not appealing the issue of availability.

[13] The Claimant's appeal raises the question of whether the General Division erred in concluding that the Commission had the power to disentitle him retroactively in the absence of new facts. The appeal also raises the question of whether the General Division failed to decide an issue that it had to decide, namely, whether the Commission should act and acted judicially when deciding to reconsider his claim.

[14] The Commission notes that the General Division indicated in its decision that the law gives the Commission the power to go back and review a claim at any point after benefits are paid to a Claimant to verify their availability. However, it submits that mentioning the law section without making a determination is an error.

[15] The Commission also submits that the General Division failed to make a clear finding on an issue that was before it, namely, whether the Commission exercised its discretionary power judicially when deciding to verify the Claimant's availability.

[16] 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 in the absence of new information and if so, whether the Commission should act and acted judicially when deciding to reconsider the claim. It did not do so.<sup>3</sup>

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<sup>3</sup> Sections 52 and 153.161(2) of the *Employment Insurance Act*.

[17] I am therefore justified to intervene.

## **Remedy**

[18] I am of the view that the issues 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, were 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>

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

## **Conclusion**

[20] The appeal is allowed.

[21] 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

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