



Citation: *JA v Canada Employment Insurance Commission*, 2023 SST 615

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant:

J. A.

Respondent:

Canada Employment Insurance Commission

Representative:

Isabelle Thiffault

Decision under appeal:

General Division decision dated November 1, 2022
(GE-22-2193)

Tribunal member:

Melanie Petrunia

Type of hearing:

Teleconference

Hearing date:

March 22, 2023

Hearing participants:

Appellant
Respondent's representative

Decision date:

May 22, 2023

File number:

AD-22-914

Decision

[1] The appeal is allowed. The General Division made an error of law and exceeded its jurisdiction. The matter will go back to the General Division for reconsideration.

Overview

[2] The Applicant, J. A. (Claimant), left his job and applied for employment insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission), decided that he was not entitled to benefits because he had not proven that he was available for work.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division allowed the appeal in part. It found that the Claimant was available for some of time that the Commission had decided he was not entitled to benefits.

[4] The General Division found that the Claimant was available for work until he refused an offer of a suitable job in late February 2022. It also decided that he was disqualified from receiving benefits when he refused this offer of employment.

[5] The Claimant is now appealing the General Division's decision to the Appeal Division. He argues the General Division based its decision on an important error of fact. I find that the General Division made an error of law in its decision and exceeded its jurisdiction when it found that the Claimant was disqualified from receiving benefits after he refused an offer of suitable employment.

[6] I am returning the matter to the General Division for reconsideration.

Issues

[7] The issues in this appeal are:

- a) Did the General Division make an error of law when it found that the Claimant was disqualified from receiving benefits after February 26, 2022?

- b) Did the General Division exceed its jurisdiction by deciding that the Claimant was disqualified after he refused an offer of suitable employment?
- c) If so, how should the error be fixed?

Analysis

[8] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:¹

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

Background

[9] The Claimant left his job after receiving an offer from another employer. While he was trying to negotiate a higher wage, and after he had given notice at his job, the new employer stopped responding to him.² When he stopped working, the Claimant applied for EI regular benefits.

[10] The Commission decided that the Claimant wasn't entitled to benefits as of January 17, 2022, because he didn't meet the availability requirements for regular benefits.

[11] The Commission disentitled the Claimant under two sections of the *Employment Insurance Act* (EI Act). One section requires a claimant make reasonable and

¹ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

² General Division decision at para 18.

customary efforts to find suitable employment and the other requires a claimant prove they are capable of and available for work each working day.³

[12] In its decision, the General Division considered both of the sections of the EI Act. It set out what it considered to be suitable employment for the Claimant and explained its reasons.⁴

[13] The General Division found that the Claimant made reasonable and customary efforts to find a suitable job from January 16 to February 26, 2022.⁵ It also found that he met all of the criteria to show that he was capable of and available for work but unable to find a suitable job for that period.⁶

[14] The General found that the Claimant was no longer available after he refused an offer of suitable employment during the last week of February 2022.⁷ It decided that the Claimant was setting personal conditions that might unduly limit his chances of going back to work. It also found that the Claimant was disqualified from receiving benefits as of February 26, 2022.⁸

The General Division erred in law and exceeded its jurisdiction

[15] The General Division found that the Claimant refused an offer of suitable employment during the last week of February 2022. It found that he was disqualified from receiving EI benefits because he did not accept this offer of suitable employment.

[16] When it found that the Claimant was disqualified, the General Division relied on a section of the EI Act that was not considered or applied by the Commission.⁹ The issue before the General Division was a disentitlement imposed by the Commission because the Claimant failed to prove his availability for work.

³ See sections 18(1)(a) and 50(8) of the *Employment Insurance Act*.

⁴ General Division decision at para 18.

⁵ General Division decision at para 21.

⁶ General Division decision at para 31.

⁷ General Division decision at para 32.

⁸ General Division decision at para 37.

⁹ See General Division decision at para 34 referencing section 27(1) of the EI Act.

[17] The General Division addressed this issue when it found that the Claimant had proven his availability until February 26, 2022. However, it then exceeded its jurisdiction by imposing a disqualification pursuant to a different section of the EI Act. It decided an issue that was not before it to decide.

[18] The section that the General Division referred to says that a claimant is disqualified if they refuse an opportunity for suitable employment *without good cause*.¹⁰ Another section of the EI Act says that this disqualification is for a period of 7 to 12 weeks, as determined by the Commission.¹¹ The General Division made no reference to this section, effectively imposing an indefinite disqualification on the Claimant. This is an error of law.

[19] The General Division erred when it decided an issue that it should not have decided. The Commission did not impose a disqualification on the Claimant for refusing an offer of suitable employment. Because it did not make this decision, it also did not consider whether the Claimant had good cause for his refusal and did not determine the number of weeks that the Claimant was disqualified for.

[20] The General Division erred in law and exceeded its jurisdiction by deciding that the Claimant was disqualified as of February 26, 2022.

Remedy

[21] To fix the General Division's error, I can give the decision that the General Division should have given or I can refer this matter back to the General Division for reconsideration.¹²

[22] The Commission agrees that the General Division made an error of law.¹³ However, it says that the General Division adequately determined that the Claimant was

¹⁰ See section 27(1)(b) of the EI Act.

¹¹ See section 28(1) of the EI Act.

¹² Section 59(1) of the DESD Act explains the remedies available to the Appeal Division.

¹³ AD3-4

disqualified but should have determined the length of the Claimant's disqualification for refusing an offer of suitable employment.¹⁴

[23] The Commission argues that I should send the matter back so that the General Division can determine the length of the disqualification or request that the Commission make this decision. The Claimant did not take a position on the appropriate remedy.

[24] As discussed above, I find that the issue of a disqualification for refusing an offer of suitable employment was not before the General Division to consider. The EI Act provides that the Commission determines the length of a disqualification, if imposed, and that this decision is a discretionary one. I do not find that it is within the jurisdiction of the General Division to impose a disqualification and determine the appropriate length.

[25] The issue before the General Division was the Claimant's availability for work. The General Division focused its analysis on the period up to February 26, 2022 and did not properly review the Claimant's availability after that date. I find that the record concerning the Claimant's availability after February 26, 2022 is not complete and the Claimant did not have an opportunity to fully present his case in that respect.

[26] I am returning the matter to the General Division for reconsideration.

Conclusion

[27] The appeal is allowed. The General Division erred in law and exceeded its jurisdiction. I am returning the matter to the General Division for reconsideration.

Melanie Petrunia
Member, Appeal Division

¹⁴ AD3-4