



[TRANSLATION]

Citation: *PC v Canada Employment Insurance Commission*, 2023 SST 1391

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** P. C.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Angèle Fricker

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**Decision under appeal:** General Division decision dated  
June 13, 2023 (GE-23-56)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** In writing

**Decision date:** October 20, 2023

**File number:** AD-23-710

## **Decision**

[1] The appeal is allowed. The Claimant was available for work throughout his benefit period.

## **Overview**

[2] The Respondent (Commission) decided that the Appellant (Claimant) was not entitled to receive Employment Insurance (EI) regular benefits as of August 21, 2022, because he was not available for work. After reconsideration, the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant wanted to go back to work as soon as possible but that he had not made enough effort to find a suitable job. It found that he had set a personal condition that limited his chances of going back to work by only looking for a job as a painter. The General Division decided that the Claimant was not available for work.

[4] In another case involving the Claimant, the General Division decided that he had just cause for leaving his job on September 5, 2022.

[5] The Claimant was given permission to appeal. He says that he did not claim benefits until September 5, 2023. He says that he was available for work as of that date.

[6] I have to decide whether the General Division made an error when it found that the Claimant was not available for work.

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

## **Issue**

[8] Did the General Division make an error when it found that the Claimant was not available for work?

## 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, the Tribunal must dismiss the appeal.

### Did the General Division make an error when it found that the Claimant was not available for work?

[12] The General Division found that the Claimant wanted to go back to work as soon as possible but that he had not made enough effort to find a suitable job. It found that he had set a personal condition that limited his chances of going back to work by only looking for a job as a painter. The General Division decided that the Claimant was not available for work.

[13] The Claimant says that he did not claim benefits until September 5, 2023. He says that he was available for work as of that date.

[14] In the Commission's view, the General Division made its decision without considering all the facts, since it failed to recognize that the Commission had not warned the Claimant that he had to expand his job search before disentitling him under section 18 of the *Employment Insurance Act*. Although the Commission is not always

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

required to give a warning before imposing a disentitlement, it is of the view that it should have done so in this case.

[15] So, since the Claimant was not given a warning specifically telling him that he had to look for other types of jobs besides that of a painter, the Commission is of the view that he should be considered available and that the disentitlement should be removed.

[16] I find that the General Division made an error by failing to consider the evidence showing that the Commission had not told the Claimant to expand his job search and had not given him a reasonable period to do so before disentitling him to benefits.

[17] This means that I am justified in intervening.

## **Remedy**

[18] Since the record is complete, I am in a position to give the decision that the General Division should have given.

[19] The evidence shows that the Claimant was ready and available to work and capable of working each day. The Commission did not tell him to expand his job search and did not give him a reasonable period to do so before disentitling him to benefits. It must be considered that he was available for work throughout his benefit period.

## **Conclusion**

[20] The appeal is allowed. The Claimant was available for work throughout his benefit period.

Pierre Lafontaine  
Member, Appeal Division