



[TRANSLATION]

Citation: *DQ v Canada Employment Insurance Commission*, 2024 SST 1

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: D. Q.
Representative: Marie-Ève Lachapelle

Respondent: Canada Employment Insurance Commission
Representative: Isabelle Thiffault

Decision under appeal: General Division decision dated July 25, 2023
(GE-23-1095)

Tribunal member: Pierre Lafontaine

Type of hearing: In writing
Decision date: January 2, 2024
File number: AD-23-826

Decision

[1] The appeal is allowed.

Overview

[2] The Respondent (Commission) decided that the Appellant (Claimant) was disentitled from receiving Employment Insurance (EI) regular benefits from December 26, 2022, because he wasn't available for work. The Commission upheld its initial decision on reconsideration. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant hadn't shown that he wanted to go back to work and had made efforts to find a suitable job. It found that the Claimant had set a personal condition that unduly limited his chances of going back to work while waiting for his employer to call him back. The General Division found that the Claimant wasn't available for work.

[4] The Claimant was given permission to appeal. He argues that the General Division made an error of fact and law.

[5] I have to decide whether the General Division made an error when it found that the Claimant wasn't available for work.

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

Issue

[7] Did the General Division make an error when it found that the Claimant wasn't available for work?

Analysis

Appeal Division's mandate

[8] The Federal Court of Appeal has determined that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

[9] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and doesn't exercise a superintending power similar to that exercised by a higher court.

[10] 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, I must dismiss the appeal.

Did the General Division make an error when it found that the Claimant wasn't available for work?

[11] The General Division found that the Claimant hadn't shown that he wanted to go back to work and had made efforts to find a suitable job because he wasn't looking for another job. It found that the Claimant had set a personal condition that unduly limited his chances of going back to work while waiting for his employer to call him back. The General Division found that the Claimant wasn't available for work.

[12] The Claimant argues that the General Division didn't consider the fact that he works part-time and was laid off temporarily. He argues that the General Division didn't consider the case law of the Federal Court of Appeal indicating that a claimant who was dismissed with a promise to be recalled on a specific date may, for a reasonable period, consider that promise to be the best job opportunity, and therefore act accordingly.

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[13] Taking into account the case law submitted by the Claimant, the Commission agrees that it applies to the facts of this case and that the Claimant should have been given a reasonable period when he was laid off on December 23, 2022, when he knew his return-to-work date, especially since he actually went back to work on that day. As a result, the Commission submits that it is conceding the appeal on the issue and asking that the Appeal Division allow the Claimant's appeal.

[14] I find that there is case law that establishes that a claimant can't just wait to be recalled and must look for work to be entitled to benefits, no matter their chances of success.²

[15] However, in a recent Federal Court of Appeal decision, the Court told us that there is no hard-and-fast rule that a claimant must immediately engage in a job search in all circumstances. There are circumstances in which claimants should be given a reasonable period before starting to look for work to see if they will be recalled.³

[16] In other words, in certain circumstances, the claimant may, for a reasonable period, consider the promise of being recalled as the most likely way to get a job again and act accordingly.

[17] The evidence shows that the Claimant was laid off by his employer, for which he has worked for seven years. He is available to work for his employer at any time during his benefit period if the employer asks him to.

[18] The evidence shows that he was unemployed for reasons beyond his control and that he considered the promise of being recalled as the most likely way to get a job again.

² *Canada (Attorney General) v Comelissen-O'Neil*, A-652-93; *Faucher v Canada (EIC)*, A-56-96; *Canada (Attorney General) v Cloutier*, 2005 FCA 73; *Lamirande v Canada (Attorney General)*, 2004 FCA 311; *Canada (Attorney General) v Stolniuk*, A-686-93; CUB 76450; CUB 69221; CUB 64656; CUB 52936; CUB 35563.

³ *Page v Canada (Attorney General)*, 2023 FCA 169.

[19] For these reasons, I am of the view that the General Division made an error of law and made its decision without regard for the material before it.

[20] I am therefore justified in intervening.

Remedy

[21] Because the file before the General Division is complete, I am able to give the decision that the General Division should have given.

[22] The evidence shows that the Claimant was ready and available for work from December 26, 2022. He was unemployed for reasons beyond his control. He was willing to work for his employer on request. The promise of being recalled was the most likely way for him to get a job again and he acted accordingly.

[23] The Claimant should have been given a reasonable period when he was laid off on December 23, 2022, when he knew his return-to-work date.

[24] The Claimant's appeal should be allowed.

Conclusion

[25] The appeal is allowed.

Pierre Lafontaine
Member, Appeal Division