



Citation: *AE v Canada Employment Insurance Commission*, 2024 SST 112

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. E.
Representative: E. S.

Respondent: Canada Employment Insurance Commission
Representative: Angèle Fricker

Decision under appeal: General Division decision dated July 4, 2023
(GE-23-110)

Tribunal member: Pierre Lafontaine

Type of hearing: In Writing

Decision date: February 7, 2024

File number: AD-23-791

Decision

[1] The appeal is allowed.

Overview

[2] The Respondent (Commission) decided that the Appellant (Claimant) was disentitled from receiving EI regular benefits from September 7, 2022, to December 2, 2022, because he wasn't available for work. The Commission said that the Claimant wasn't available because he was in school full-time. 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 rebut the presumption of non-availability. It found that the Claimant did not show he wanted to go back to work and that his efforts to find work were not sufficient. The General Division found that the Claimant limited his chances of being employed because he was in school full-time and didn't have time to work during the week.

[4] The Appeal Division granted the Claimant leave to appeal the General Division's decision to the Appeal Division. The Claimant submits that the General Division based its decision on the assumption that he could not work and study at the same time. He submits that he was available for work during his studies.

[5] I must decide whether the General Division made an error when it concluded that the Claimant was not available to work.

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

Issue

[7] Did the General Division make an error when it concluded that the Claimant was not available to work?

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* (DESDA), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[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.²

[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.

Did the General Division make an error when it concluded that the Claimant was not available to work?

[11] The Claimant submits that the General Division based its decision on the assumption that he could not work and study at the same time. He submits that he was available for work during his studies.

[12] The Commission submits that the General Division erred in fact when it found that there was no evidence of exceptional circumstances that would rebut the

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

² *Idem*.

presumption of non-availability, and that the Claimant was unduly limiting his chances of finding work because he was following a training course.

[13] The Commission submits that the Claimant was available for work full-time after 2pm and evenings while studying.³ He had a history of working nights while in school and had made efforts to find a job.

[14] The Commission submits that the General Division made an error when it determined that the Claimant limited his chances of being employed because he was in school full-time and did not have time to work during the week.

[15] Considering the evidence on file showing the Claimant had a work-study history and was available and looking for a job offering the same conditions, and the recent decision by the Federal Court of Appeal in *Page*, the Commission is satisfied the Claimant has proven his availability.⁴

[16] As such, the Commission recommends the Appeal Division allow the Claimant's appeal and, under section 59(1) of the DESDA, decide he was available to work and entitled to benefits from September 7, 2022, to December 2, 2022.

[17] I am of the view that the General Division erred when it found that there was no evidence of exceptional circumstances that would rebut the presumption of non-availability. It has been held that the nature of a claimant's previous employment and their demonstrated ability to maintain part-time employment over the long term, while simultaneously attending full-time studies, is an exceptional circumstance sufficient to rebut the presumption of non-availability.⁵

[18] Furthermore, considering the recent *Page* decision from the Federal Court of Appeal, the General Division erred in the application of the third *Faucher* factor by determining that the Claimant set personal conditions that might have unduly limited his

³ See GD3-86.

⁴ *Page v Canada (Attorney General)*, 2023 FCA 169.

⁵ See GD3-86; *J. D. v Canada Employment Insurance Commission*, 2019 SST 438.

chances of going back to work because he was in school full-time and did not have time to work during the week.

[19] The Federal Court of Appeal has established that full-time students are not always disentitled to employment insurance benefits if they are unavailable to work on a full-time basis during daytime hours. It is not an error of law to conclude that a claimant is available if they are available for employment in accordance with their previous work schedule.

[20] For these reasons, I am justified to intervene.

Remedy

The record is complete, and I can decide this case on its merits

[21] I find that the record is complete and will render the decision that the General Division should have given.

[22] Considering the evidence on file showing the Claimant had a work-study history and was available and looking for a job offering the same conditions, and the recent decision by the Federal Court of Appeal in *Page*, I am satisfied the Claimant has proven his availability.

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

Conclusion

[24] The appeal is allowed. The Claimant was available to work and entitled to benefits from September 7, 2022, to December 2, 2022.

Pierre Lafontaine
Member, Appeal Division