



Citation: *AA v Canada Employment Insurance Commission*, 2024 SST 429

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:
Representative:

A. A.
Andrew Bomé

Respondent:
Representative:

Canada Employment Insurance Commission
Gilles-Luc Bélanger

Decision under appeal:

General Division decision dated July 14, 2023
(GE-23-577)

Tribunal member:

Solange Losier

Decision date:

January 23, 2024

File number:

AD-23-730

Decision

[1] The appeal is allowed. The matter will go back to the General Division for reconsideration.

Overview

[2] A. A. is the Claimant in this case. The Canada Employment Insurance Commission (Commission) paid him Employment Insurance (EI) regular benefits.

[3] The Commission later decided that he was not entitled to get EI benefits because he was taking a training course on his own initiative and had not proven his availability for work. This created an overpayment of EI benefits. The General Division reached the same conclusion.

[4] The parties agree that the General Division based its decision on an important mistake when it found that the Claimant was required to attend his classes and that the matter should return to the General Division for reconsideration.¹

[5] I accept the agreement reached between the parties and am returning the matter to the General Division for reconsideration.

The parties agree on the outcome of the appeal

[6] Before the Appeal Division hearing, the parties agreed to the outcome of this appeal.² Because of this, the in-person hearing was cancelled and this written decision reflects what the parties have agreed to.³

¹ See section 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act) and 59(1) of the DESD Act.

² See pages AD5-1 to AD5-5; AD6-1 to AD6-3 and AD7-1.

³ See pages AD8-1 to AD8-3 and AD9-1.

[7] In summary, the parties agree as follows:

- The General Division based its decision on an important error of fact when it decided that the Claimant's classes were not optional and,
- I should allow the appeal and return it to the General Division for reconsideration.

I accept the proposed outcome

[8] The Claimant said that the General Division mischaracterized his evidence about his classes. He was not required to be at his lectures at a specific time and for a specific amount of time. The lectures were pre-recorded, so he could watch them on his own time. He says that school did not impact his ability to be available for full-time work.

[9] In its decision, the General Division said that the Claimant testified in detail about his school schedule.⁴ After the hearing, the Claimant sent the Tribunal an email and said that his classes were optional.⁵ The General Division accepted the post-hearing email because it said that it was relevant to his availability while in school.⁶

[10] The General Division did not accept that the Claimant's classes were optional. It said that if his classes were optional, it would have been reasonable for the Claimant to mention that at the hearing or to the Commission.⁷

[11] The General Division explained that even if the Claimant's classes were optional, he testified that he was in fact going to his classes four days a week.⁸ It concluded that his classes were not optional as claimed and gave the post-hearing email less weight over his testimony about his class schedule. Finally, it decided that once he started school he had restrictions that unduly limited his ability to find work.⁹

⁴ See paragraphs 79-82 of the General Division decision.

⁵ See paragraphs 83 of the General Division decision.

⁶ See paragraph 8 of the General Division decision and page GD6-1 of the appeal record.

⁷ See paragraph 84 of the General Division decision.

⁸ See paragraphs 85 and 87 of the General Division decision.

⁹ See paragraphs 84 and 90 of the General Division decision.

[12] I am accepting the proposed outcome between the parties because the hearing recording establishes that there was some discussion about the optional nature of the Claimant's school program and courses.¹⁰ The Claimant told the General Division that he could stop school anytime and take a holiday from his school and referred to it as "optional." He also testified that his courses were online.

[13] The Commission agreed that the Claimant told the General Division that he could work and that there was no conflict between his studies and full-time work.¹¹ It says that the Claimant confirmed that he had virtual schooling and was not required to attend his classes at school.

[14] There are two possible remedies. The Appeal Division can refer the matter back to the General Division for reconsideration, or give the decision that the General Division should have given.¹²

[15] The parties have agreed to return the matter back to the General Division for reconsideration. I agree that this is the appropriate remedy because the Claimant didn't have a full opportunity to present evidence about how his studies affected his availability for work.

[16] I accept that the General Division based its decision on an important error of fact about the facts of the case, specifically that his class attendance was not optional.

Conclusion

[17] I am allowing the appeal based on the agreement between the parties. The appeal will return to the General Division for reconsideration.

Solange Losier
Member, Appeal Division

¹⁰ Listen to the audio recording of the General Division hearing at 33:32 to 34:35 and 57:25 to 57:35.

¹¹ See pages AD1-1 to AD1-5.

¹² The remedies are set out in section 59(1) of the DESD Act.