Citation: *Canada Employment Insurance Commission v. K. L.*, 2013 SSTAD 8

Appeal No. 2013-0297



BETWEEN:

**Canada Employment Insurance Commission**

Appellant

and

**K. L.**

Respondent

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# SOCIAL SECURITY TRIBUNAL DECISION

## Appeal Division – Appeal

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| SOCIAL SECURITY TRIBUNAL MEMBER: | Mark BORER |
| DATE OF DECISION: | November 8, 2013 |
| DECISION: | Appeal allowed |

## DECISION

[1] The appeal is allowed. The case will be returned to the General Division of the Social Security Tribunal for a rehearing.

## INTRODUCTION

[2] On January 24, 2012, a panel of the Board of Referees (the "Board") determined that the appeal of the Respondent from the previous determination of the Commission should be allowed. The Appellant appealed that decision to the Office of the Umpire, and on December 4, 2012 the Umpire set aside the decision and referred the matter back to the Board for a rehearing.

[3] On February 5, 2013, a differently constituted panel of the Board again determined that the appeal of the Respondent from the previous determination of the Commission should be allowed. The Appellant again appealed that decision to the Office of the Umpire on February 22, 2013.

[4] This appeal was heard on the record.

## ANALYSIS

[5] The standard of review for errors of law or jurisdiction is correctness.

[6] The standard of review for errors of fact or mixed fact and law is reasonableness.

[7] The Appellant submits that the Board exceeded its jurisdiction in finding that the Respondent had been properly referred by a designated authority to a course of instruction. The Appellant further submits that the Board failed to make findings of fact or law on the issue of availability as required, thereby again erring in law.

[8] In its decision, the Board held that since the Respondent was enrolled in a valid apprenticeship program, he was "exempt" from proving availability. For that reason, it did

not perform an analysis as to whether or not the Respondent was available as defined by the EI Act.

[9] It appears to me that the Board was under a mistaken impression regarding the relationship between apprenticeship programs and referrals to courses of instruction by a designated authority.

[10] Section 25 of the EI Act holds that a claimant is deemed to be available if they are attending a course of instruction which they have been referred to by the Commission or an authority designated by the Commission. It is this section of the EI Act that the Board appears to have based their decision upon, although they do not explicitly say so.

[11] Often, but not always, this course of instruction is an apprenticeship training program. This fact appears to have led to some confusion.

[12] Although the Board correctly found that the Respondent is attending an apprenticeship course, there was no evidence before the Board that indicated that the Respondent had been referred to this course of instruction by the Commission or a designated authority as required by s.25 of the EI Act.

[13] It necessarily follows that if s.25 of the EI Act does not apply, then the Board should have made findings on the issue of availability. By not so doing, the Board violated section 114(3) of the EI Act, which requires full written reasons on all issues before the Board.

[14] In short, the Board was tasked with answering the question of whether or not the Respondent was available for employment while pursuing a full time course and failed to do so. Such a decision cannot stand.

[15] The Appellant has requested that I give the decision that the Board should have given, but I decline to do so. The Respondent should have the opportunity to fully make their case to the General Division of the Tribunal.

**CONCLUSION**

[16] Therefore, for the reasons above, the appeal is allowed and the matter is referred back to the General Division of the Tribunal for a rehearing.

*Mark Borer*

Member, Appeal Division