

Citation: *Canada Employment Insurance Commission v. K. B.*, 2014 SSTAD 131

Appeal No. 2013-0574

BETWEEN:

**Canada Employment Insurance Commission**

Appellant

and

**K. B.**

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: June 2, 2014

DECISION: Appeal allowed

## **DECISION**

[1] The appeal is allowed. The decision of the board of referees is rescinded, and the determination of the Commission is varied in accordance with these reasons.

## **INTRODUCTION**

[2] On February 28, 2013, 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 in part. The Commission appealed that decision to the Office of the Umpire on March 19, 2013.

[3] On April 1, 2013 the Appeal Division of the Social Security Tribunal (“the Tribunal”) became seized of any appeal not heard by an Umpire by that date.

[4] On April 1, 2014 a teleconference hearing was held. The Commission and the Respondent each attended and made submissions.

## **THE LAW**

[5] To ensure fairness, this matter will be examined based upon the Appellant’s legitimate expectations at the time of the appeal to the Office of the Umpire. For this reason, the present appeal will be decided in accordance with the legislation in effect immediately prior to April 1, 2013.

[6] According to subsection 115(2) of the *Employment Insurance Act* (“the Act”) which was in effect before April 1, 2013, the only grounds of appeal are that:

(a) ) the board of referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the board of referees erred in law in making its decision or order, whether or not the error appears on the face of the record; or

(c) ) the board of referees 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.

[7] The standard of review for questions of law and jurisdiction is correctness.

[8] The standard of review for questions of fact and mixed fact and law is reasonableness.

## **ANALYSIS**

[9] I believe it is fair to say that the Commission does not normally appeal against decisions of the Board that have been determined in their favour. Yet that is what has happened here, and for the reasons below I agree that the Commission was right to do so.

[10] The facts of the case are not in dispute. On June 10, 2011 the Respondent applied for parental benefits which, after serving his two week waiting period, he received benefits for two weeks before returning to work. In November 2011, the Respondent lost his employment, and again applied for benefits. Although his claim was granted, because of his earlier claim and the allocation of his severance package, the Respondent was unable to receive the full amount of benefits that he would have normally been entitled to.

[11] In order to rectify this, the Respondent requested that his earlier claim be cancelled and asked that the two weeks of benefits received under that claim be deducted from the benefits that would now be payable so as to eliminate any overpayment.

[12] In a decision letter dated November 21, 2012 the Commission informed the Respondent that his previous claim could not be cancelled “as you did not show us that between March 22, 2012 and November 6, 2012 you had good cause for being late in making this request”.

[13] The Respondent appealed against this decision to the Board and argued that he did indeed have good cause for the delay.

[14] The Board considered the arguments of the Respondent, concluded that he did have good cause, allowed “the antedate request” but denied the Appellant’s request to cancel the previous benefit period.

[15] It is because of the uncertain nature of this decision that the Commission has appealed to the Tribunal. They note that although the reasons of the Board appear to indicate that the Respondent should have his claim cancelled, the final decision indicates that the appeal was denied and that the benefit period should not be cancelled. The Commission therefore asks for the guidance of the Tribunal to determine what actions if any should be taken on this file.

[16] The Respondent, for his part, is also confused by the decision and agrees that it is impossible to understand what they truly meant. He asks that his benefit period be cancelled as he originally requested.

[17] I agree with the parties that the decision is confusing and the outcome unclear. This is the very definition of a poorly reasoned decision and a breach of natural justice, and as such this decision cannot stand.

[18] The Commission asks that I give the decision that the Board should have given. I agree that in this case this is the correct course of action because although the Board failed to make clear findings, the underlying facts in evidence are not in dispute. It would serve no purpose to return the matter to the General Division.

[19] A benefit period may be cancelled if the conditions of s.10(6)(a) or (b) of the Act are satisfied. Those sections read, in part, as follows:

“10(6) Cancelling benefit period – Once a benefit period has been established for a claimant, the Commission may

(a) ) cancel the benefit period if it has ended and no benefits were paid or payable during the period; or

(b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant

(i) establishes under this Part... a new benefit period beginning the first week for which benefits were paid or payable... and

(ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and end on the day when the request for cancellation was made.

[20] As discussed above, the Commission's initial decision letter listed only the lack of good cause as the reason for refusing the Respondent's request. The Commission now candidly admits that this was an error, and indeed does not appeal against the finding by the Board that good cause existed. Rather, the Commission now maintains that there are no circumstances in which the Respondent's benefit period can be cancelled according the wording of s.10(6) and concedes that the decision of the Board to the contrary was in error.

[21] Correctly, the Commission points out that s.10(6)(a) only applies if no benefits have been paid or are payable. This does not apply to the Respondent because he has already received benefits on his claim. The Commission also notes that s.10(6)(b) only allows the cancellation of that portion of the benefit period immediately before the first week for which benefits were paid. In this case, there is no such portion because the Respondent received his benefits at the very beginning of his benefit period.

[22] During the discussion of these issues before me, the Respondent appeared to accept that this understanding of the Act was correct, but was frustrated that this had not been explained to him in the beginning. He noted that considerable resources had been expended due to the initial error of the Commission, the unclear decision of the Board, and the subsequent failure of the Commission to correct the explanation of their decision at any point during the process before now.

[23] I share the disappointment of the Respondent, and agree that errors took place at various stages of this process. Unfortunately, as correctly stated by the Commission, I do not have the power to act contrary to the Act even if I believe that it is in the interests of justice.

[24] Based upon the foregoing, I find that the only possible decision available to me is to find that the Respondent does not qualify under s.10(6) of the Act to have any part of his benefit period cancelled, as was the initial determination of the Commission, albeit for very different reasons.

## **CONCLUSION**

[25] Therefore, for the above reasons, the appeal is allowed. The decision of the Board is rescinded and the determination of the Commission is varied in accordance with these reasons.

*Mark Borer*

Member, Appeal Division