

Citation: *M. B. v. Canada Employment Insurance Commission*, 2014 SSTAD 180

Appeal No. 2012-1949

BETWEEN:

M. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: July 23, 2014

DECISION: Appeal allowed in part

DECISION

[1] The appeal is allowed in part. The case will be returned to the General Division of the Tribunal for reconsideration solely on the issue of whether or not the Appellant meets the exemption set out in s.33(2)(b) of the *Employment Insurance Regulations*.

INTRODUCTION

[2] On November 8, 2012, a panel of the board of referees (the “Board”) determined that the appeal of the Appellant from the previous determination of the Commission should be denied. The Appellant appealed the decision to the Office of the Umpire on December 4, 2012.

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

[4] On July 8, 2014 a teleconference hearing was held. The Commission attended and made submissions, but the Appellant did not. As I was satisfied that the parties had received notice of the hearing, I proceeded regardless.

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] In its decision, the Board found that the Appellant was not entitled to benefits during a non-teaching period because he did not meet any of the exemptions set out in s.33(2) of the *Employment Insurance Regulations* (“the Regulations”).

[10] Unfortunately, as admitted by the Commission, the Board did not make any findings on the Appellant’s contention that his employment in teaching was on a casual or substitute basis. This is important because that determination is necessary to decide whether or not s.33(2)(b) of the Regulations has been met.

[11] The Commission submits that this error is not fatal and that the decision should be upheld, but after considering the matter I find that I cannot agree.

[12] The Appellant asserted before the Board that he was a supply teacher. If this were so, he may be entitled to benefits. The Board should have turned its mind to this question and made a determination as to whether or not the Appellant met the requirements of s.33(2)(b) of the Regulations. By not so doing, the Board committed an error of law reviewable on the correctness standard.

[13] I do not find, however, any need to intervene in any other aspect of the decision. As such, the only issue remaining to be determined is whether or not the Appellant met the

requirements of s.33(2)(b) of the Regulations. The case will be returned to the General Division on that issue alone.

CONCLUSION

[14] For the above reasons, the appeal is allowed. The case will be returned to the General Division of the Tribunal for reconsideration solely on the issue of whether or not the Appellant meets the exemption set out in s.33(2)(b) of the *Employment Insurance Regulations*.

Mark Borer

Member, Appeal Division