

Citation: *J. L. v. Canada Employment Insurance Commission*, 2014 SSTAD 291

Appeal No. 2012-1153

BETWEEN:

**J. L.**

Appellant

and

**Canada Employment Insurance Commission**

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: October 14, 2014

DECISION: Appeal dismissed

## **DECISION**

[1] The appeal is dismissed.

## **INTRODUCTION**

[2] On May 24, 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. In due course, the Appellant appealed that decision to an umpire.

[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 May 15, 2014 a teleconference hearing was held. The Commission appeared and made submissions, but the Appellant did not. As I am satisfied that notice of the hearing was given to all parties, 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] The Appellant, through his representative, objects to the fact that no reasoning was given to support the conclusions of the Board. He (the representative) also objects to the Board stating that no new evidence was presented at the hearing even though he argued the Appellant's case for almost 30 minutes. He asks that "the Board incorporate my concerns in a revised decision to reflect that I did in fact represent [the Appellant] in a proper and professional manner rather than leaving him with the impression that I was not part of the hearing and contributed nothing".

[10] The Commission supports the decision of the Board, and asks that the appeal be dismissed.

[11] The Appellant appears to be objecting to the fact that the arguments of his representative were not considered by the Board. In support of this, the Appellant references a statement in the Board's decision that no new evidence was presented at the hearing.

[12] I note that by definition, statements by counsel or a representative at a hearing are not evidence. They are submissions, and in the absence of information regarding which of these submissions the Board is alleged to have ignored, I am not prepared conclude that this decision should be disturbed.

[13] If the Appellant or his representative had attended the teleconference hearing before me they might have made further submissions on this point, but as they did not I must base my decision on the information in the docket.

[14] In my view, as evidenced by their decision, the Board weighed the evidence, made findings of fact, established the correct law, and applied the facts to the law. Contrary to the

written submissions of the Appellant, I find that the conclusions of the Board were supported by the evidence and the law and proper reasons were given.

[15] I have found no evidence to support the ground of appeal invoked or any other possible ground of appeal. There is no reason for the Tribunal to intervene.

## **CONCLUSION**

[16] Therefore, for the above reasons, the appeal is dismissed.

*Mark Borer*

Member, Appeal Division