

Citation: *F. V. v. Canada Employment Insurance Commission*, 2015 SSTAD 228

Appeal No. AD-13-85

BETWEEN:

F. V.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: February 19, 2015

DECISION

[1] The appeal is granted.

INTRODUCTION

[2] On May 14, 2013, a panel of the board of referees determined that:

- The allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the “*Regulations*”).

[3] The Applicant requested leave to appeal to the Appeal Division on June 21, 2013. Leave to appeal was granted on December 22, 2014.

ISSUE

[4] The Tribunal must decide if the board of referees erred in fact and in law when it determined that the allocation of earnings was calculated in accordance with sections 35 and 36 of the *Regulations*.

THE LAW

[5] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division 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.

STANDARD OF REVIEW

[6] The parties made no representations to the Tribunal regarding the applicable standard of review.

[7] The Tribunal acknowledges that the Federal Court of Appeal determined that the standard of review applicable to a decision of a board of referees or an Umpire regarding questions of law is the standard of correctness - *Martens c. Canada (A.G.)*, 2008 FCA 240 and that the standard of review applicable to questions of fact and law is reasonableness - *Canada (PG) v. Hallée*, 2008 FCA 159.

ANALYSIS

[8] The Respondent submits that in the case in hand, the Appellant was notified on November 23, 2012 of the Respondent's decision to adjust her claim for benefits for the week commencing August 30, 2009 and September 6, 2009. The date in which she was notified of the Respondent's decision, falls outside the 36 months period allowed to reconsider a claim for benefits. In accordance with section 52 of the *Employment Insurance Act*, the Respondent had up until November 2009 to reconsider the claim for benefits.

[9] With that said, the Respondent submits that it has not met its burden of proof to show that it exercised its discretionary authority in extending the time to reconsider the claim for benefits beyond the 36 months because the Appellant was not informed that the Respondent was of the opinion that she had provided false or misleading information for the weeks under review. (*Langelier*, A-140-01; *Dussault*, A-646-02).

[10] In light of the above the Respondent concedes the claimant's appeal with regards to the allocation of earnings to the week commencing August 30, 2009 and September 6, 2009.

[11] The Tribunal agrees with the position of the Respondent and grants the appeal of the Appellant.

CONCLUSION

[12] The appeal is granted.

Pierre Lafontaine

Member, Appeal Division