

Citation: *P. R. v. Canada Employment Insurance Commission*, 2015 SSTAD 229

Appeal No. AD-13-90

BETWEEN:

**P. R.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: February 19, 2015

## **DECISION**

[1] The appeal is granted and the file returned to the General Division (Employment Insurance Section) for a new hearing.

## **INTRODUCTION**

[2] On June 6, 2013, a panel of the board of referees determined that:

- The imposition of a disentitlement pursuant to sections 9 and 11 of the *Employment Insurance Act* (the “*Act*”) and section 30 of the *Employment Insurance Regulations* (the “*Regulations*”) was justified for failing to prove unemployment;
- The imposition of a non-monetary warning penalty was justified pursuant to section 38 of the *Act* for making a misrepresentation by knowingly providing false or misleading information.

[3] The Applicant requested leave to appeal to the Appeal Division on June 25, 2013. Leave to appeal was granted on December 22, 2014.

## **ISSUES**

[4] The Tribunal must decide if the board of referees erred in fact and in law when it concluded that:

- The imposition of a disentitlement was justified pursuant to sections 9 and 11 of the *Act* and section 30 of the *Regulations*;
- The imposition of a non-monetary warning penalty was justified pursuant to section 38 of the *Act*.

## **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 Appellant made no representations to the Tribunal regarding the applicable standard of review.

[7] The Respondent submits 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.

[8] 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**

[9] In reviewing the Board's Decision and in particular with reference to the Board's findings as notated under the heading Findings of Fact Application of Law (Page 4),

relevant to the imposition of a disentitlement to benefits pursuant to section 9 and 11 of the *Act* and the issuance of the warning letter, it is the Respondent's position that the Board:

- (1) did not fully or adequately address all six factors as per section 30(3) of the *Act* such that a finding that the Appellant was not unemployed could be determined;
- (2) did not provide any findings relevant to the issue of misrepresentation or of the element of the Appellant having knowingly provided false or misleading information to the Respondent.

[10] The Tribunal finds that the Board of referees failed to interpret and apply the appropriate legal tests to the issues before it.

[11] The Tribunal finds that the matter should be sent back to the General Division of the Tribunal (Employment Insurance Section) for a new hearing.

## **CONCLUSION**

[12] The appeal is granted and the file is returned to the General Division of the Tribunal (Employment Insurance Section) for a new hearing.

[13] The Tribunal orders that the decision of the board of referees dated June 6, 2013, be withdrawn from the file.

*Pierre Lafontaine*

Member, Appeal Division