[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. P. G.*, 2015 SSTAD 388

Appeal No. AD-13-1161

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

P. G.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: March 23, 2015

DECISION

[1] The appeal is allowed, the decision of the Board of Referees dated April 15, 2013 is rescinded, and the Respondent's appeal to the Board of Referees is dismissed.

INTRODUCTION

[2] On April 15, 2013, a Board of Referees determined that:

> - the Respondent had a sufficient number of insurable hours to meet the requirements of section 7.1 of the *Employment Insurance Act* (the "Act").

[3] The Appellant filed an application for leave to appeal with the Appeal Division on May 3, 2013. The application for leave to appeal was granted on January 15, 2015.

ISSUE

[4] The Tribunal must decide whether the Board of Referees erred in fact and in law in determining that the Respondent had a sufficient number of hours of insurable employment to meet the requirements of section 7.1 of the Act.

THE LAW

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act*, 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 or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

STANDARDS OF REVIEW

[6] The Appellant submits that the applicable standard of review is correctness - *Martens v. Canada (AG)*, 2008 FCA 240.

[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 v. Canada (AG)*, 2008 FCA 240, and that the standard of review applicable to questions of mixed fact and law is reasonableness - *Canada (AG) v. Hallée*, 2008 FCA 159.

ANALYSIS

[8] According to section 3(1)(a) of the *Social Security Tribunal Regulations*, the Tribunal must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

[9] In the present case, the Respondent moved, without complying with his duty to notify the Tribunal of the change in his contact information as required by section 6 of the *Social Security Tribunal Regulations*. The Tribunal made reasonable efforts to contact the Respondent, but was unsuccessful. It will therefore make a decision on the appeal in accordance with section 43(a) of the *Social Security Tribunal Regulations*.

[10] In allowing the Respondent's appeal, the Board of Referees stated:

> [Translation] "*However, the Board finds that the claimant's situation is consistent with the one described in CUB-59045, in that a great deal of time elapsed between the commission of the offence and the service of the notice of violation on the claimant.*
>
> *As far as the Umpire was concerned, it goes without saying that a notice of violation should be issued the same day, or be dated the same day. The Commission cannot issue a notice of violation nearly six months after the fact and give the violation a date other than the date on which the offence was committed.*"

[11] With respect, the Board of Referees erred in law when it determined that the notice of violation had to be issued the same day, or bear the same date as the commission of the offence.

[12] In fact, the statement made by Umpire Martin in *CUB 59045* is as follows:

> "*In my opinion, the violation cannot be justified except as a consequence of an act or omission. It goes without saying that a notice of violation should be issued on the same day as a notice of penalty, or at least be dated the same day. It cannot be argued that the Commission may issue a notice of violation almost more than six months after the fact and indicate a date on it that is not the date of the alleged act. This violation can relate only to the penalty of August 7, 1997. This was not an error made by a Commission employee, but an error of law.* (Emphasis added by the undersigned.)

[13] Given this error, the Tribunal is justified in intervening and in giving the decision that the Board of Referees should have given.

[14] In the present case, the Appellant served a notice of violation on the Respondent on January 20, 2009, at the same time as it imposed a penalty based on a violation under section 38 of the Act (Exhibits AD2-22 to AD2-24).

[15] The Respondent is a new entrant or re-entrant to the labour force who was the subject of a notice of minor violation served on January 20, 2009. Consequently, the Respondent needed to accumulate at least 1,138 hours of insurable employment within the meaning of section 7.1(2) of the Act in order to meet the conditions required to establish a claim for sickness benefits. He accumulated 1,040 hours of insurable employment during his qualifying period, which spanned from November 20, 2011, to November 17, 2012.

[16] Therefore, the Respondent did not have a sufficient number of insurable hours to meet the requirements of section 7.1 of the Act.

CONCLUSION

[17] The appeal is allowed, the decision of the Board of Referees dated April 15, 2013 is rescinded, and the Respondent's appeal to the Board of Referees is dismissed.

Pierre Lafontaine
Member, Appeal Division