

Citation: *N. M. v. Canada Employment Insurance Commission*, 2015 SSTAD 521

Appeal No. AD-14-441

BETWEEN:

N. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: April 24, 2015

DECISION: Appeal allowed

DECISION

[1] On consent, the appeal is allowed.

INTRODUCTION

[2] On June 14, 2014, a member of the General Division determined that the appeal of the Appellant should be allowed in part. In due course, the Appellant filed an application with the Appeal Division requesting leave to appeal.

[3] On March 25, 2015, leave to appeal was granted.

[4] This appeal was decided on the record.

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 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.

[6] As previously determined by the Federal Court of Appeal in *Canada (Attorney General) v. Jewett*, 2013 FCA 243, *Chaulk v. Canada (Attorney General)*, 2012 FCA 190, and many other cases, the standard of review for questions of law and jurisdiction in employment insurance appeals is that of correctness, while the standard of review for questions of fact and mixed fact and law in employment insurance appeals is reasonableness.

ANALYSIS

[7] This case involves allegations of fraud and coercion. It is alleged that the Appellant's now deceased husband compelled the Appellant by violence and deception to apply for, and to lie to maintain, employment insurance benefits that she knew she was not entitled to receive.

[8] The General Division member hearing this matter at first instance found that although a notice of violation was unwarranted, the Appellant should still be liable to repay the unlawfully paid benefit moneys. In doing so, he accepted the uncontested evidence that the record of employment submitted by the Appellant was false. The member also accepted the uncontested evidence that the Appellant did knowingly make certain false representations, and therefore concluded that there were no legal grounds to revoke the imposition of a penalty by the Commission.

[9] Having considered the matter further, the Commission now takes the position that their initial determination was incorrect and that this appeal should be allowed. They do so on the basis that the evidence now shows that the Appellant's husband caused the Commission to make the overpayments in question without the Appellant's knowledge and consent, and that the Appellant was therefore blameless. Although they do not explicitly say so, they also appear to accept that the Appellant was under extreme duress from her husband to lie to the Commission, and that in those circumstances the imposition of a penalty for making a false statement would be inappropriate.

[10] As the parties are now in agreement as to the correct resolution of this matter, I am prepared to agree with them that this appeal should be allowed.

CONCLUSION

[11] Therefore, on consent and for the reasons above, the appeal is allowed.

Mark Borer

Member, Appeal Division