Citation: *A. Q. v. Canada Employment Insurance Commission*, 2015 SSTAD 807

Appeal No. AD-14-533

BETWEEN:

A. Q.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER : Mark Borer

DATE OF DECISION: June 25, 2015

DECISION: Appeal allowed in part

DECISION

[1] On consent, the appeal is allowed in part. The disentitlement imposed shall commence on September 10, 2013.

INTRODUCTION

[2] On August 19, 2014, a member of the General Division determined that the appeal of the Appellant from the previous determination of the Commission should be dismissed. In due course, the Appellant filed an application with the Appeal Division requesting leave to appeal.

[3] On April 24, 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 concerns the General Division finding that the Appellant was on a work rotation where she worked long hours in one week and then received time off to compensate the next week. Based upon this finding, the General Division concluded that the Appellant was not unemployed as defined by the *Employment Insurance Act* during the time in question and therefore could not receive benefits.

[8] Initially, the Commission imposed a retroactive disentitlement but now concedes that the disentitlement should only have been imposed the week of the decision, September 10, 2013.

[9] The Appellant, having considered this new Commission position, notes that this will eliminate the overpayments owed and therefore accepts this concession.

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

CONCLUSION

[11] Therefore, on consent and for the reasons above, the appeal is allowed in part. The disentitlement imposed shall commence on September 10, 2013.

Mark Borer
Member, Appeal Division