Citation: *J. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 826

Appeal No. AD-13-705

BETWEEN:

J. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER : Mark Borer

DATE OF DECISION: June 30, 2015

DECISION: Appeal dismissed

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On September 10, 2013, a member of the General Division dismissed the appeal of the Appellant against the previous determination of the Commission.

[3] In due course, the Appellant filed an application for leave to appeal with the Appeal Division. Leave to appeal was granted on February 10, 2015.

[4] On June 16, 2015, a teleconference hearing was held. The Appellant and the Commission each attended and made submissions.

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] The sole issue in this appeal is the correct interpretation of ss. 37(b) of the *Employment Insurance Act*. That portion of the *Act* states that:

> 37. Prison inmates and persons outside of Canada –
>
> Except as may otherwise be prescribed, a claimant is not entitled to receive benefits for any period during which the claimant
>
> …
>
> (b) is not in Canada.

[8] The Appellant contends that the phrase "not in Canada" should not be interpreted as "not physically in Canada". Instead, the Appellant argues that as technology now allows job searches to be conducted from anywhere in the world, the *Act* should be read so as to take this into account.

[9] Having canvassed the existing jurisprudence, I note *Smith v. Canada (Attorney General)*, 2001 SCC 88, a binding decision of the Supreme Court of Canada on this issue. In that decision, the court upheld a decision of the Federal Court of Appeal which in turn upheld an umpire decision that determined the constitutionality of certain portions of the *Act*, including s. 32 (as s. 37 was numbered at that time).

[10] In doing so, the Court additionally held that the mobility rights of claimants were not infringed by the provisions of the *Act*, and upheld the initial determination of the umpire (at paragraph 5 of his decision) that:

> Leaving Canada is clearly a circumstance which disentitles claimants from receiving benefits.

[11] As it is not disputed that the Appellant left Canada during the time in question without meeting any of the exemptions established in s. 55 of the *Employment Insurance Regulations*, this is sufficient to dispose of this appeal.

[12] In closing, I would refer the Appellant to the comments made by the Tax Court of Canada in discussing an unrelated point of law in *Sherman v. M.N.R.* at paragraph 22:

> The law on the point in issue in this appeal is very clear and has been consistently applied by the courts. I am therefore reminded somewhat of the comments of Cory J. of the Supreme Court of Canada in *Alberta Treasury Branches v. M.N.R.*, 1996 CanLII 244 (SCC), [1996] 1 S.C.R. 963, that "agile legal minds can probably find an ambiguity in as simple a request as "close the door please" and most certainly in even the shortest and clearest of the ten commandments". If I may also paraphrase the comments of Stephen J. in *In Re Castioni*, [1891] 1 QB 149: On many occasions people try to misunderstand legislation that is easy to understand. In drafting legislation it is not enough to attain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible a degree of precision which a person reading it otherwise cannot misunderstand. It is all the better if he cannot pretend to misunderstand.

CONCLUSION

[13] For the above reasons, the appeal is dismissed.

Mark Borer

Member, Appeal Division