[TRANSLATION]

Citation: ***Canada Employment Insurance Commission v. G. C.*****, 2015 SSTAD 880**

Date: July 15, 2015

File number: AD-13-1145

APPEAL DIVISION

Between:

Canada Employment Insurance Commission

Appellant

and

G. C.

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

Hearing held by teleconference on July 14, 2015

REASONS AND DECISION

DECISION

[1] The appeal is allowed and the case referred back to the Tribunal's General Division (Employment Insurance Section) for a new hearing.

INTRODUCTION

[2] On April 10, 2013, a Board of Referees found that:

> - The Respondent had accumulated a sufficient number of hours of insurable employment to be able to establish a claim for Employment Insurance benefits under section 7 of the *Employment Insurance Act* (the Act).

[3] On April 19, 2013, the Appellant submitted an application for leave to appeal the decision to the Appeal Division. On February 3, 2015, the application for leave to appeal was granted.

TYPE OF HEARING

[4] The Tribunal determined that the appeal would be heard via teleconference for the following reasons:

- the complexity of the issue or issues;
- the fact that the parties' credibility was not one of the main issues;
- the cost-effectiveness and expediency of the hearing choice;
- the need to proceed as informally and quickly as possible while complying with the rules of natural justice.

[5] The Appellant, represented by Rachel Paquette, and the Respondent, participated in the hearing.

THE LAW

[6] Under 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 or order, whether or not the error appears on the face of the record; or

(c) the General Division 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.

ISSUE

[7] The issue is as follows:

- Did the General Division err in fact and in law in finding that the Respondent had accumulated a sufficient number of hours of insurable employment to be able to establish a claim for Employment Insurance benefits under section 7 of the Act?

ARGUMENTS

[8] The Appellant's arguments in support of its appeal are as follows:

- Under section 90 of the Act, the authority to make a ruling on the insurability of an employment or the number of hours of insurable employment falls to the Canada Revenue Agency;

- According to the evidence on the docket, the Respondent had accumulated a total of 500 hours of insurable employment in her qualifying period between October 30, 2011 and October 26, 2012, where a minimum of 560 hours was required under section 7 of the Act;

- The Federal Court of Appeal has stated that neither the Board of Referees nor the Umpire can alter the requirements set out in section 7 of the Act.

[9] The Respondent's arguments against the Appellant's appeal are as follows:

- The Appellant did not consider travel time as hours of insurable employment even though Employment Insurance premiums had been deducted;

- She had the number of hours needed to establish a benefit period under section 7 of the Act, and according to the Board of Referees' decision;

- She is requesting that the Appellant's appeal be dismissed because the Board of Referees' decision is well founded in fact and in law.

STANDARDS OF REVIEW

[10] The Appellant submits that the standard of review applicable respectively to an excess of jurisdiction and to a question of law is correctness. The standard of review applicable to questions of mixed fact and law is reasonableness (*Canada (AG) v. Romano, 2008 FCA 117; Canada (AG) v. Hallée*, 2008 FCA 159).

[11] The Respondent made no submissions to the Tribunal concerning the applicable standard of judicial review.

[12] The Tribunal notes that the Federal Court of Appeal has held that the standard of judicial review applicable to a decision of a Board of Referees or an Umpire on questions of law is 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

[13] Paragraph 90(1)(*d*) of the Act provides expressly that an officer of the Canada Revenue Agency is authorized to make a ruling on "how many hours an insured person has had in insurable employment."

[14] Subsection 90(2) of the Act provides that the Appellant may request a ruling at any time, but a request by any other person must be made before the June 30 following the year to which the question relates.

[15] The Tribunal does not believe that the Board of Referees had jurisdiction to determine the number of hours of insurable employment (*Canada (AG) v. Haberman*, 2000 FCA 150). The Tribunal is of the opinion that the Board of Referees exceeded its jurisdiction when it established that the Appellant had accumulated an additional number of insurable hours.

[16] At the appeal hearing, the Appellant argued that a decision on the number of hours the Respondent had in insurable employment had been made in this case by the Canada Revenue Agency on November 4, 2013, that is, after the Board of Referees' decision. However, the Appellant did not file the decision in the appeal record and the Respondent did not seem to be aware of the decision.

[17] For these reasons, the Tribunal refers the matter back to the Tribunal's General Division (Employment Insurance Section) for a new hearing by a new member.

CONCLUSION

[18] The Tribunal allows the appeal and refers this case back to the Tribunal's General Division (Employment Insurance Section) for a new hearing by a new member.

[19] The Tribunal orders that the General Division's decision dated April 10, 2013, be removed from the file.

Pierre Lafontaine
Member, Appeal Division