

Citation: *O. R. v. Canada Employment Insurance Commission*, 2015 SSTAD 998

Date: August 19, 2015

File number: AD-14-607

APPEAL DIVISION

Between:

O. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Shu-Tai Cheng, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] On July 27, 2015, the Appeal Division of the Social Security Tribunal of Canada (Tribunal) granted leave to appeal on the grounds that the Appellant had not been given an opportunity to be heard and, therefore, that a breach of natural justice may have occurred.

[2] The Tribunal requested the parties' submissions on the mode of hearing, whether one is appropriate and, also, on the merits of the appeal.

[3] The Respondent filed submissions which recommend that the General Division decision be set aside and the claimant's appeal be returned to "a new General Division" so that the case can be heard anew.

[4] The Appellant filed a letter asking for clarification on the submissions required of him. In light of the Respondent's submissions, it is unnecessary for the Appellant to file submissions, at this time.

ISSUE

[5] The Tribunal must decide whether to dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

LAW AND ANALYSIS

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal are the following:

- (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.

[7] Leave to appeal was granted on the basis that the Appellant had set out reasons which fall into the enumerated grounds of appeal and that at least one of the reasons had a reasonable chance of success, specifically, under paragraph 58(1)(a) of the DESD Act.

[8] The Respondent agrees that there was a possible breach of natural justice.

[9] Section 59(1) of the DESD Act sets out the powers of the Appeal Division. It states:

The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

[10] Considering the submissions of the parties, my review of the Board's decision and the appeal file, I allow the appeal. Because this matter will require the parties to present evidence, under the principle of *audi alteram partem*, a hearing before the General Division is the appropriate form of hearing. Further, at the Respondent's request, the will be referred to a different member of the General Division.

CONCLUSION

[11] The appeal is allowed. The case will be referred back to the General Division of the Tribunal for reconsideration by a different Member.

Shu-Tai Cheng
Member, Appeal Division