Citation: *Canada Employment Insurance Commission v. K. J.*, 2015 SSTAD 1036

Appeal No. AD-13-1147

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

K. J.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: August 31, 2015

DECISION: Appeal allowed

DECISION

[1] The appeal is allowed. The decision of the board of referees is rescinded and the determination of the Commission is restored.

INTRODUCTION

[2] On June 27, 2013, a panel of the board of referees (Board) allowed the appeal of the Respondent against the previous determination of the Commission.

[3] In due course, the Commission filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] On August 13, 2015, a teleconference hearing was held. The Commission attended and made submissions but the Respondent did not. As evidence in the file indicates that the Respondent personally signed for the package containing the notice of hearing, I was satisfied that they received proper notice and proceeded in their absence.

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 [or the Board] failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> (b) the General Division [or the Board] erred in law in making its decision, whether or not the error appears on the face of the record; or
>
> (c) the General Division [or the Board] 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 appeal involves a question of the correct allocation of earnings.

[8] The Commission submits that the Board erred by allocating certain income according to when the income was received rather than when it was earned, as it should have done.

[9] In their decision, the Board appears to have determined that because she was a teacher with a permanent contract the Respondent's income should be allocated over the full length of the contract, instead of over the much shorter period when it was actually earned. This conclusion led the Board to allow the Respondent's appeal.

[10] The relevant section of the *Employment Insurance Regulations* states:

> 36(4) Earnings that are payable to a claimant under a contract of employment for the performance of services shall be allocated to the period in which the services were performed.

[11] It is not clear to me why the Board did not apply the above provision as written. By not doing so the Board committed an error of law, reviewable on the correctness standard.

[12] Having come to the above conclusion, I note that the facts of the case are not in dispute. Applying the law to those facts leads to the inescapable conclusion that the Commission was correct in the way that it initially allocated the earnings in question.

CONCLUSION

[13] For the above reasons, the appeal is allowed. The decision of the board of referees is rescinded and the determination of the Commission is restored.

Mark Borer
Member, Appeal Division