Citation: *Canada Employment Insurance Commission v. G. H.*, 2015 SSTAD 1037

Appeal No. AD-14-114

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

G. H.

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 The decision of the board of referees is rescinded and the determination of the Commission is restored.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 October 1, 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. Leave to appeal was granted on March 3, 2015.

[4] On August 13, 2015, a teleconference hearing was held. The Commission and the Respondent 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 [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 questions of insurable hours and jurisdiction.

[8] The Commission notes that the *Employment Insurance Act* states that the Canada Revenue Agency (CRA) and the Tax Court of Canada have exclusive jurisdiction over any question involving insurable hours. They submit that the Board erred by determining that the Respondent had just over 600 insurable hours, when in fact the Tax Court of Canada had ruled that the Respondent had 597 insurable hours.

[9] In their decision, the Board correctly stated that the decision of the Tax Court found that the Respondent had only accumulated 597 hours of insurable employment in her qualifying period. However, the Board then took it upon themselves to "correct" parts of the court decision of which they did not agree with, resulting in the Respondent being credited with just over 600 insurable hours. The Board then allowed the appeal on that basis.

[10] The Respondent argues that the Tax Court did indeed err in the manner suggested by the Board, and that the "corrections" made by the Board were proper. She admitted that no appeal of the Tax Court decision had been made, and was unable to explain to me on what basis the Board had jurisdiction to make its own findings on the issue of insurable hours in the face of the contrary wording of the *Act*.

[11] It is settled law that only the CRA and the Tax Court have the power to make determinations about insurable hours of employment. By finding to the contrary the Board committed an error of jurisdiction, reviewable on the standard of correctness.

[12] To be clear, even if I were to accept the Respondent's arguments that the Tax Court erred, which I do not, neither the Board nor the Tribunal has the power to ignore the legislative provisions enacted by Parliament. Any decision which does so, no matter the circumstances, commits a reviewable error.

[13] The Tax Court found that the Respondent had accumulated 597 hours of insurable employment, less than the 600 required by the Respondent to qualify for benefits. It follows that the Respondent does not qualify for benefits, and that the initial determination of the Commission to deny benefits was correct.

CONCLUSION

[14] 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