Citation: *Canada Employment Insurance Commission v. C. M.*, 2015 SSTAD 1145

Appeal No. AD-14-108

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

C. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER :	Mark BORER
DATE OF DECISION:	September 29, 2015
DECISION:	Appeal allowed

DECISION

[1] The appeal is allowed. The matter is returned to the General Division for reconsideration.

INTRODUCTION

[2] On September 17, 2013, a panel of the board of referees (the 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 25, 2015, a teleconference hearing was held. The Commission 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 case revolves around the correct calculation of the Respondent's benefit rate.

[8] I note that the Respondent did not attend the hearing. This is not surprising, as the Tribunal's efforts to locate her at the address she provided resulted in the notice of hearing being "returned to sender". Efforts to contact her using the phone number she provided similarly failed, and she did not provide the Tribunal with an email address.

[9] This is problematic, as the *Social Security Tribunal Regulations* do not allow me to proceed with the hearing without being satisfied that all parties have received notice. For the above reasons, I am not satisfied that the Respondent has received notice as required.

[10] It is clear to me that to proceed without notifying the Applicant is not permitted by the Regulations. It is also clear to me that Tribunal staff have taken reasonable steps to locate the Applicant.

[11] Although an available option would be simply to adjourn the appeal until further information becomes available, this is impractical as well as prejudicial to the Commission. They are entitled to have the matter resolved, one way or the other, and there is little value in maintaining "orphan" files indefinitely.

[12] According to s. 6 of the Regulations, all parties must notify the Tribunal of any change in their contact information without delay. The Applicant has clearly failed to do so.

[13] I therefore find that the Respondent has failed to comply with s. 6 of the Regulations, and order that this matter proceed without any further requirement to notify the Respondent. I do not make this decision lightly, and do so in the belief that this decision complies with my regulatory requirement to secure the just and most expeditious determination of appeals and applications as the considerations of fairness and natural justice permit.

[14] On the merits of the matter, the Commission submits that the Board calculated the Respondent's benefit rate incorrectly, thereby erring in law. Instead of using the best 14 weeks of insurable income, the Board simply divided the entire amount of insurable income by 14.

[15] Having considered the decision, I find that although the Board seems to have understood the correct test to be applied they erred in doing so as alleged by the Commission. This renders the decision unreasonable.

[16] The Commission asks that I give the decision that the Board should have given to avoid the necessity of a new hearing. To this end, I asked the Commission to direct me (in writing) to the evidence that would allow me to calculate the rate myself.

[17] Unfortunately, although the further submissions of the Commission purport to represent the correct benefit rate, they do not explain how I (or they for that matter) could determine the best 14 **weeks** of insurable earnings when the evidence in the file lists **monthly** income only.

[18] This file must therefore be returned to the General Division so that a proper calculation can be made.

CONCLUSION

[19] For the above reasons, the appeal is allowed. The matter is returned to the General Division for reconsideration.

Mark Borer
Member, Appeal Division