

Citation: *K. H. v. Canada Employment Insurance Commission*, 2015 SSTAD 1470

Appeal No. AD-13-274

BETWEEN:

**K. H.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Appeal**

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SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: December 22, 2015

DECISION: Appeal dismissed

## **DECISION**

[1] The appeal is dismissed.

## **INTRODUCTION**

[2] On May 9, 2013, a panel of the board of referees (the Board) allowed in part the Appellant's appeal against the previous determination of the Commission

[3] In due course, the Appellant 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 Appellant and the Commission 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 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.

[6] Administrative law currently establishes only two standards of review, that of correctness and that of reasonableness.

[7] 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**

[8] This appeal concerns whether or not certain moneys were allocated properly by the Commission.

[9] The Appellant argues that she did nothing wrong. She followed the directions given to her by the Commission and her Employer, but now is being asked to repay an overpayment made by the Commission. The Appellant further notes that the entire process has been frustrating, and that it is not fair that she must pay for the mistakes of the Commission.

[10] The Commission now admits that errors were made in the handling of the initial claim, but submits that these errors were eventually corrected as reflected in the Board's decision. They note that claimants may only receive those benefits which the law entitles them to, and that any overpayments must be repaid. They ask that the appeal be dismissed.

[11] In their decision the Board summarized the evidence and correctly set out the applicable law before turning their attention to applying the law to the facts. After assessing the evidence, the Board found that \$840 had been misallocated. The Board then directed the Commission to reallocate this amount in the specific manner the Board set out and dismissed the remainder of the appeal.

[12] Notwithstanding the difficulties encountered by the Appellant in attempting to resolve her issues, I can find no error in the Board findings. I am fully prepared to accept that the Appellant did nothing wrong, but in the absence of some error on the part of the Board their decision must stand and the overpayment must be repaid. I note that the Board properly identified an error made by the Commission, and corrected that error.

[13] Having considered the appeal docket, the submissions of the parties, and the decision of the Board, I find no reviewable error. In my view, as evidenced by the decision, the Board conducted a proper hearing, weighed the evidence, made findings of fact, established the correct law, and applied the facts to the law properly.

[14] I have found no evidence to support the ground of appeal invoked or any other possible ground of appeal. There is no reason for the Appeal Division to intervene.

### **CONCLUSION**

[15] For the above reasons, the appeal is dismissed.

*Mark Borer*

Member, Appeal Division