Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *R. L. v. Canada Employment Insurance Commission*, 2016 SSTADEI 19

Date: January 15, 2016

File number: AD-15-113

APPEAL DIVISION

Between:

R. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

Hearing held via teleconference on January 14, 2016

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On February 11, 2015, the Tribunal's General Division found that:

> -The Respondent was justified in reconsidering the claim for benefits under section 52 of the *Employment Insurance Act* (Act).

[3] The Appellant requested leave to appeal before the Appeal Division on March 4, 2015. Leave to appeal was granted on June 10, 2015.

TYPE OF HEARING

[4] The Tribunal decided that the appeal would be heard via teleconference for the following reasons:

- The complexity of the issue or issues;
- the fact that the parties' credibility was not one of the main issues;
- the cost-effectiveness and expediency of the hearing choice;
- the need to proceed as informally and quickly as possible while complying with the rules of natural justice.

[5] The Appellant attended the hearing. The Respondent did not attend despite having received a notice of hearing.

THE LAW

[6] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

(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 or order, whether or not the error appears on the face of the record; or

(c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUES

[7] The Tribunal must determine whether the General Division erred in fact and in law when it found the Respondent was justified in reconsidering the claim for benefits under section 52 of the Act, and when it found that, due to the change in economic region, the Appellant did not have enough hours to qualify and that his benefit rate should have been amended and the number of benefit weeks reduced.

SUBMISSIONS

[8] The Appellant submitted the following arguments in support of his appeal:

- He contests the General Division's decision to uphold the 72-month time limit to reconsider his claim. This is the only decision and the only issue he is appealing;

- In its decision, the General Division did not take into account that he had been misinformed by the Respondent's officer at the Cap-Aux-Meules office, who advised him to use the address of his seasonal residence at the Islands in his reports (Leave to Appeal, AD1-1);

- He was not aware that he had to use his permanent address when claiming benefits; on the other hand, the officer could not have been unaware of the Act when providing him with false information (Leave to Appeal, AD1-1);

- He never made any “false or misleading representation” in his claims for benefits;

- The concept of “habitual residence” is complex and ambiguous for the average citizen and he never had the intention of defrauding the Respondent.

[9] The Respondent submitted the following arguments against the Appellant’s appeal:

- The General Division’s appeal file shows that it had to decide upon the Appellant’s habitual place of residence in order to determine which economic region would used to calculate the number of eligible weeks, his benefit rate, and the duration;

- Despite the fact that the Appellant feels a deep attachment to the Magdalen Islands, the submitted evidence shows that he resided there only intermittently, either in his brother’s residence or in a trailer strictly for work purposes. Working in the Magdalen Islands each year during the summer season does not change his usual place of residence;

- The facts show that the Appellant’s usual place of residence was actually in Waterloo, where he shares a home with his spouse. A temporary address cannot represent a usual place of residence, within the meaning of the Act. The fact remains that his house in Waterloo is his main residence and he returns there every year at the end of the fishing season;

- The General Division’s decision is reasonably consistent with the facts on record. The General Division relied on all the evidence before it (*André Lépine* (A-78-89) and it explained its conclusions in a consistent and coherent argument (*McDonald* (A-297-97);

- The General Division had before it an issue in which it had to assess the facts. That being said, the courts have repeatedly stated that the Board of Referees (now the General Division) is best placed to assess evidence and credibility and

that they cannot substitute their opinion for the General Division's unless the evidence as a whole could not reasonably support the decision reached (*Rancourt*, A-355-96);

- The Federal Court of Appeal (A-115-94 and A-255-95) has clearly stated that an Umpire (now the Appeal Division) must not substitute their opinion to that of a Board of Referees (now the General Division) unless they felt that the decision was made in a perverse or capricious manner or without regard for the material before it.

STANDARDS OF REVIEW

[10] The Appellant did not make any representations regarding the applicable standard of review.

[11] The Respondent submits that the applicable standard of review for a decision of a Board of Referees (now the General Division) and an Umpire (now the Appeal Division) on questions of law is correctness, and that the applicable standard of review for questions of mixed fact and law is reasonableness - *Martens v. Canada (A.G.*), 2008 FCA 240, *Canada (A.G.) v. Hallée*, 2008 FCA 159.

[12] Although the term "appeal" is used in section 113 of the Act (formerly section 115 of the Act) to describe the procedure introduced before the Appeal Division, the Appeal Division's authority is essentially identical to that previously granted to the Umpires and that which is granted to the Federal Court of Appeal by section 28 of the *Federal Courts Act*. The proceeding is therefore not an appeal in the usual sense of the word, but rather a circumscribed review - *Canada (A.G.) v. Merrigan*, 2004 FCA 253.

[13] The Tribunal is of the opinion that the Appeal Division should provide a degree of deference to the General Division's decisions that is consistent with the degree of deference provided to the decisions of the former Board of Referees being appealed before the Employment Insurance Umpire.

[14] The Federal Court of Appeal decided that the standard of review applicable to a decision of a Board of Referees (now the General Division) or an Umpire (now the Appeal Division) regarding questions of law is the standard of correctness, and that the standard of review applicable to questions of fact and law is reasonableness - *Chaulk v. Canada (A.G.)*, 2012 FCA 190, *Martens v. Canada (A.G.)*, 2008 FCA 240, *Canada (A.G.) v. Hallée*, 2008 FCA 159.

ANALYSIS

[15] Because the issues submitted before the General Division are identical in each of the Appellant's records, this decision concerns the following records: AD-15-113, AD-15-114, AD-15-115, AD-15-116, AD-15-117, AD-15-118, AD-15-119 et AD-15-120.

72-Month Extension

[16] In his application for leave to appeal, which was granted by the Tribunal, the Appellant contests the General Division's decision to uphold the 72-month time limit for reconsidering his claim for benefits (AD1-1). In his submissions at the Tribunal, the Appellant reiterates that this is the only issue and decision he is appealing before the Tribunal (AD2-1).

[17] The Appellant emphasizes that he had never made any false or misleading statements that would have allowed the Respondent to extend the time limit for consideration to seventy two (72) months. The error is a result of the misinformation he received from an officer at the Cap-aux-Meules office. He argues that the Respondent had removed the penalties and violations because he had not made any false or misleading representations.

[18] The Federal Court of Appeal determined in *Langelier* (A-140-01), *Lemay* (A-172-01) and *Dussault* (A-646-02) that, to be granted the extended time to reconsider set out in subsection 52(5) of the Act, the Commission does not have to establish that the Claimant in question made false or misleading statements but must instead simply show that it could reasonably find that a false or misleading statement was made in connection with a benefit claim. (Emphasis added by the undersigned)

[19] Therefore, at the reconsideration stage, the Respondent was not compelled to establish that the Appellant had in fact made a false or misleading statement. The Respondent had to simply suspect that a false or misleading statement had been made.

[20] In the circumstances of this case, could the Respondent reasonably believe that the Appellant had made a false or misleading statement or representation?

[21] In this case, the Respondent believes that the Appellant had failed to provide information regarding his usual place of residence.

[22] The Appellant completed his reports by stating that his home address was located in Fatima. However, during an interview dated November 27, 2013, the Appellant reported that he has owned a home on X X in Waterloo since 2004. He reported that this was his principal residence.

[23] Each year, when he goes to work in the Islands for the summer, he states that he lives in a trailer he owns that is located on a campsite.

[24] The Appellant confirmed having provided his employer with his brother W. L.'s address in Fatima (X X) and that this was also the address he provides when he applies for Employment Insurance benefits since he usually files his application over there and returns to Waterloo only a few weeks after having finished work. In 2013, he provided his friend G. P.'s address in Fatima (X X) because his brother was not there that year.

[25] The Appellant stated that he was aware that fewer insurable hours were needed to establish an Employment Insurance claim when the application is filed in the Magdalen Islands. He confirmed that he was aware of the fact that he was providing someone else's address, but explained that he provides this temporary address because at the end of the season he closes up his trailer and stays with his brother or his friend. The Appellant also stated that his wife would stay in Waterloo for the entire time he was in the Magdalen Islands for work (GD3-16-17).

[26] The Respondent sent its decision dated December 23, 2013, to the Appellant after the interview on November 27, 2013 (GD3-21-22).

[27] Based on the above-mentioned evidence and in applying the teachings of the Federal Court of Appeal to this case, the Tribunal considers, on the basis of the evidence, that the Respondent could reasonably find that the Appellant made a false or misleading statement or representation and therefore could be granted a period of 72 months to reconsider the Appellant's benefit claim.

Usual Place of Residence

[28] Based on the evidence submitted before it, the General Division found the following:

> [TRANSLATION]
> [61] The Tribunal closely examined the circumstances in this case. In case CUB 21968, Umpire Strayer stated:
>
> > The test of where one is "ordinarily resident" involves a consideration of both subjective and objective facts. Furthermore, this test must be applied to the situation that existed during the relevant week, meaning in this case, the week preceding the application for benefits (...)
>
> [62] Despite the fact that the Appellant feels a deep attachment to the Magdalen Islands, the submitted evidence shows that he resided there only intermittently, either in his brother's residence or in a trailer strictly for work purposes. Working in the Magdalen Islands each year during the summer season does not change his usual place of residence. The facts show that the Appellant's usual place of residence is actually in Waterloo, where he shares a home with his spouse. A temporary address cannot represent a usual place of residence, within the meaning of the Act. The fact remains that his house in Waterloo is his main residence and he returns there every year at the end of the fishing season.
>
> [63] In the case of *Luc L. Lévesque* (CUB 46001), Judge Forget states:
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> > Although the expression "ordinarily resident" is not defined in the legislation, the Commission states that the term "resident" must refer to the place in which a claimant has settled and that the modifier "ordinarily" clearly excludes any stay in a place in which a person has no intention of establishing residence.
>
> [64] Although the Appellant has in the Magdalen Islands a bank account and a cellphone account, the facts clearly show that he owns a home in Waterloo and that all his assets are also in Waterloo. The Tribunal sympathises with the Appellant's personal circumstances; however, the evidence presented shows that, as regards the Centre du Québec economic region #17, the usual place of residence is in fact Waterloo.

> [65] The Tribunal finds that having a temporary residence for work purposes and having a usual residence are two separate notions. In this case, the Appellant's usual residence is in Waterloo and he went to the Magdalen Islands for the summer season. Therefore, his habitual residence was not in the Magdalen Islands because he stayed there only intermittently, during the summertime.

[29] As stated during the appeal hearing, the Tribunal does not have the authority to retry a case or to substitute its discretionary power for that of the General Division. The Tribunal's authority is limited by subsection 115(2) of the *Department of Employment and Social Development Act*.

[30] Unless the General Division failed to observe a principle of natural justice, erred in law or 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, the Tribunal must dismiss the appeal.

[31] In *Le Centre de valorisation des produits marins de Tourelle Inc.* (A-547-01), Justice Létourneau stated that the Tribunal's function is limited "to deciding whether the view of facts taken by the Board of Referees (now the General Division) was reasonably open to them on the record."

[32] The Tribunal finds that the General Division's decision was made based on the evidence submitted before it, and that this was a reasonable decision that complies with both legislation and jurisprudence.

[33] There is no reason for the Tribunal to intervene.

[34] In closing, it must be emphasized that, in *Lanuzo v. Canada*, 2005 FCA 324, the Federal Court of Appeal ruled that when a claimant receives money to which they were not entitled, the Respondent's error does not exempt them from repaying this amount.

CONCLUSION

[35] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division