



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Y. X. v. Canada Employment Insurance Commission*, 2016 SSTADEI 22

Appeal No. AD-14-324

BETWEEN:

Y. X.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: January 19, 2016

DECISION: Appeal allowed

Canada

DECISION

[1] The appeal is allowed. The case will be returned to the General Division for reconsideration.

INTRODUCTION

[2] On June 2, 2014, a member of the General Division determined that the appeal of the Appellant from the previous determination of the Commission should be dismissed. In due course, the Appellant appealed that decision to the Appeal Division and leave to appeal was granted.

[3] On November 3, 2015, a teleconference hearing was held. Both the Appellant's counsel and the Commission attended and made submissions.

ANALYSIS

[4] This is a case involving an alleged fraud and the resulting overpayment, penalty and notice of violation.

[5] In his decision, the General Division member determined that the two alleged Employers had never actually employed the Appellant, and that the records of employment submitted were fraudulent. The member came to this conclusion regarding the second Employer based upon an investigation done by the Commission. The member did not cite any evidence for his conclusions regarding the first Employer, simply finding that "there is no credible evidence that [the Appellant] was ever employed by either employer". Based upon this, the member concluded that the benefit periods should be cancelled and a penalty and notice of violation for making a number of false statements should be imposed.

[6] At the hearing before me, the Appellant by way of counsel made a number of well-reasoned arguments. It is only necessary, however, to address one of these arguments to conclude that the member's decision is flawed and cannot stand.

[7] Prior to the General Division hearing, the Appellant brought to his counsel's attention the fact that he had visited their offices once before, on an occasion when he had been having difficulties with his Employer some years earlier.

[8] As a result of this information, counsel prepared an affidavit and submitted this to the General Division (found at exhibit GD2B – 14 and GD2B – 15) along with an intake sheet from April 2010 (found at exhibit GD2B – 16).

[9] Taken together, these two documents stood for the proposition that the Appellant had been having serious issues with the first Employer years before this claim. Obviously, if these documents are accepted as true, it would mean that the Appellant was indeed employed as alleged and that at least the first Employer was not fraudulent.

[10] The Commission, for their part, supports the ultimate decision of the General Division. They do, however, admit that these two documents appear to be important ones that perhaps the General Division should have considered.

[11] I find that the General Division member failed to consider these documents, as they are nowhere mentioned in his decision.

[12] It was open to the General Division member to explain why this evidence was not accepted. But it could not simply be ignored, especially since the member concluded (at paragraph 60) that there was "no credible evidence" that either employment existed.

[13] By ignoring the documents, the member failed to properly consider the Appellant's arguments and evidence and thereby rendered an unreasonable decision.

[14] Finally, I note that the General Division member failed to properly render a decision regarding the issuing of a penalty. Although he correctly stated the law, he failed to explain on what basis he concluded that the Appellant knowingly made a false statement. In fact, as I have found above, it is not even clear that the statements made were false.

[15] As it is my view that the correct remedy for these errors is a new hearing before the General Division, it is not necessary to address the Appellant's remaining arguments.

CONCLUSION

[16] For the above reasons, the appeal is allowed. The case will be returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division