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

Citation: *T. B. v. Canada Employment Insurance Commission,* 2016 SSTADEI 23

Appeal No. AD-14-361

BETWEEN:

T. B.

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] On consent, the appeal is allowed. The matter will be returned to the General Division for reconsideration.

INTRODUCTION

[2] On June 4, 2014, a General Division member dismissed 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 November 19, 2015, a teleconference hearing was held. The Appellant and the Commission each appeared 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.

ANALYSIS

[6] This appeal concerns the length of time the Appellant was out of Canada, whether the Appellant was available during that period, and whether or not a penalty for knowingly making a false statement should be levied.

[7] The General Division member, in coming to his decision, concluded that the Commission had been correct in its determinations on the above three points.

[8] However, at the hearing before me it became clear that the General Division member erred. First, he noted that the Commission had conceded that the length of disentitlement should be slightly amended and appeared to accept this concession, but then dismissed the Appellant's appeal without making the adjustment.

[9] Second, although there was contradictory evidence as to the dates that the Appellant was out of Canada, the member did not explain why he preferred one set of evidence over the other.

[10] Third, the member failed to consider and apply *Canada (Attorney General) v. Picard*, 2014 FCA 46, when determining the length of the disentitlement for being out of Canada. *Picard* establishes that the correct length in days of the disentitlement (subject to any exceptions as found in the Regulations) is determined by establishing how many hours the claimant has been out of Canada, dividing by 24 and dropping the remaining hours. I stress that *Picard* is now settled law. It must be applied in all cases where the claimant has left Canada.

[11] With regard to the second error I understand why the member came to the conclusion he did. No doubt this was because, as the Appellant has now conceded, the Appellant himself wrote the wrong date in a letter to the Tribunal (found at exhibit GD3 – 15). Notwithstanding this, however, other evidence in the file showed an alternative date (such as a copy of his passport, found at exhibit GD3 – 14) and it was incumbent upon the member to resolve this inconsistency.

[12] The parties now agree that in light of the above errors, this file should be returned to the General Division for a new hearing.

[13] I also agree. This decision cannot stand.

CONCLUSION

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

Mark Borer

Member, Appeal Division