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

Citation: *B. G. v. Canada Employment Insurance Commission,* 2016 SSTADEI 45

Appeal No. AD-13-138

BETWEEN:

B. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: January 27, 2016

DECISION: Appeal allowed

DECISION

[1] On consent, the appeal is allowed. The decision of the board of referees is rescinded, and the determination of the Commission is restored.

INTRODUCTION

[2] On May 16, 2013, a panel of the board of referees (the Board) 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 December 3, 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 agreed that the moneys in question must be allocated. He disputes, however, the calculations made by the Commission.

[10] The Commission, although maintaining that the calculations were done correctly, acknowledges that calculations can be very complex and difficult to understand. To assist, they have provided a chart that sets out in detail how and why the allocations were done. Unfortunately, this chart was not available to the Board.

[11] It cannot be denied that the Board struggled with the admittedly complex calculations, and that the ultimate decision that they reached is confusing. It is not completely clear to me, for example, what the Board intended to be done following their decision. Were the calculations to stand, or were they to be redone by the Commission?

[12] As the evidence was not in dispute and in order to avoid a potential new hearing before the General Division, the parties and I agreed that together we would go through each and every period of earnings line by line to see if the calculations were correct.

[13] At the end of this process, the Appellant was satisfied that the calculations of the Commission as set out in AD5 – 4 were correct, and that he owed $601.00 as the Commission had alleged.

[14] As this is my view as well, it follows that in the interests of clarity the Board decision should be set aside and the decision of the Commission restored.

CONCLUSION

[15] For the above reasons and on consent, the appeal is allowed. The decision of the board of referees is rescinded, and the determination of the Commission is restored.

Mark Borer

Member, Appeal Division