Citation: *T. T. Canada Employment Insurance Commission,* 2016 SSTADEI 58

Tribunal File Number: AD-14-201

BETWEEN:

T. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal decision

DECISION BY: Pierre Lafontaine

HEARD ON: January 28, 2016

DATE OF DECISION: February 2, 2016

Canada

DECISION

[1]   The appeal is granted and the file returned to the General Division for a new hearing on all issues.

INTRODUCTION

[2]   On August 9, 2013, a panel of the board of referees determined that:

- The allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the "*Regulations*");

- The imposition of a penalty was justified in accordance with section 38 of the *Employment Insurance Act* (the "*Act*") for making a misrepresentation by knowingly providing false or misleading information to the Respondent;

- A notice of violation was issued in accordance with section 7.1 of the *Act*.

[3]   The Appellant requested leave to appeal to the Appeal Division on April 22, 2014. Extension of time and Leave to appeal were granted on June 12, 2015.

ISSUES

[4]   The Tribunal must decide if the board of referees erred in fact and in law when it determined that the allocation of earnings was calculated in accordance with sections 35 and 36 of the *Regulations,* that a penalty was justified under section 38 of the *Act* and that a notice of violation was issued in accordance with section 7.1 of the *Act.*

THE LAW

[5]   Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

(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.

STANDARD OF REVIEW

[6] The Appellant made no representations to the Tribunal regarding the applicable standard of review.

[7]   The Respondent submits that the Federal Court of Appeal has determined that the standard of review applicable to questions of law is the standard of correctness and that the standard of review applicable to questions of mixed fact and law is reasonableness - *Martens v. Canada (AG)*, 2008 FCA 240; *Canada(AG) v. Hallée*, 2008 FCA 159.

[8]   The Tribunal acknowledges that the Federal Court of Appeal has determined that the standard of review applicable to a decision of a board of referees or an Umpire regarding questions of law is the standard of correctness - *Martens c. Canada (AG)*, 2008 FCA 240 and that the standard of review applicable to questions of fact and law is reasonableness - *Canada (AG) v. Hallée*, 2008 FCA 159.

ANALYSIS

[9]   The Respondent submits that, in the present case, the board has not shown or demonstrated any substantial findings of fact to support its decision to deny the claimant's appeal. Furthermore, the board made an error in law in arriving at their decision since it has failed to notate the proper legal test for each of the issues before it.

[10]   In view of the above, the Respondent respectfully requests that the appeal be granted and the file returned to the General Division to be heard as a case *de novo*.

[11]   The Tribunal finds that the board of referees did not apply the proper legal test for each of the issues before it and therefore each legal test was not interpreted correctly. This constitutes an error in law.

[12] For these reasons, the Tribunal returns the file to the General Division of the Tribunal (Employment Insurance section) so that a Member can proceed with a new hearing on all issues.

CONCLUSION

[13]   The appeal is granted and the file returned to the General Division for a new hearing on all issues.

Pierre Lafontaine
Member, Appeal Division