



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. G. v. Canada Employment Insurance Commission*, 2016 SSTADEI 71

Tribunal File Number: AD-15-886

BETWEEN:

E. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

HEARD ON: On the Record

DATE OF DECISION: February 8, 2016

REASONS AND DECISION

INTRODUCTION

[1] On December 15, 2015, the Appeal Division (AD) of the Social Security Tribunal of Canada (Tribunal) granted leave to appeal on the grounds of breach of natural justice. The decision of the General Division (GD) appealed from relates to the refusal of an extension of time for the Appellant to file an appeal before the GD.

[2] The Tribunal requested the parties' submissions on the mode of hearing, whether one is appropriate and, also, on the merits of the appeal.

[3] The Respondent filed submissions which recommend that in the interest of procedural fairness and natural justice, the matter be returned to the GD to be heard on the substantive issue, which is the delayed request for reconsideration denied by the Commission.

[4] In light of the Respondent's submissions, it was unnecessary for the Appellant to make submissions.

[5] This appeal proceeded on the basis of the record for the following reasons:

- a) The lack of complexity of the issue(s) under appeal; and
- b) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[6] In the circumstances, it is unnecessary to hold an oral hearing at the AD.

ISSUES

[7] Whether the GD breached a principle of natural justice in arriving at its decision.

[8] Whether the AD should dismiss the appeal, give the decision that the GD should have given, refer the case to the GD for reconsideration or confirm, rescind or vary the decision of the GD.

LAW AND ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (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.

[10] Leave to appeal was granted on the basis that the Appellant had set out reasons which fall into the enumerated grounds of appeal and that at least one of the reasons had a reasonable chance of success, specifically, under paragraph 58(1)(a) of the DESD Act.

[11] In particular, the decision granting leave to appeal stated:

[19] Therefore, it appears that the Tribunal was mistaken in treating the appeal before the GD as incomplete and was mistaken in treating it as late before the GD.

[20] These apparent errors in the treatment of the [Notice of Appeal] are what led to the GD refusing an extension of time. This situation forms a reasonable basis upon which to assert a breach of procedural fairness and natural justice.

[21] On the ground that there may be a breach of natural justice, I am satisfied that the appeal has a reasonable chance of success. I need not pronounce on the grounds that there may be errors of fact, given that a breach of procedural fairness would be determinative of the appeal.

[12] The Respondent agrees that the Appellant was not late in submitting her appeal to the GD and states that the matter should be returned to the GD to be heard on the merits.

[13] The GD found that the appeal was incomplete and late. I find that both conclusions were wrong. The GD then refused to grant an extension of time, when an extension of time was

not needed, based on a mechanical application of the *Gattallero* factors (*Canada (Minister of Human Resources Development) v. Gattallero*, 2005 FC 883).

[14] Therefore, the GD decision was based on erroneous findings of fact that the GD made in a perverse or capricious manner or without regard for the material before it and an error of law. In addition, the GD failed to observe a principle of natural justice, specifically procedural fairness.

[15] Subsection 59(1) of the DESD Act sets out the powers of the AD. It states:

The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

[16] Considering the submissions of the parties, my review of the GD decision and the appeal file, I allow the appeal. Because this matter has not been heard on the merits and may require the parties to present evidence, a hearing before the GD is appropriate.

CONCLUSION

[17] The appeal is allowed. The case will be referred back to the General Division of the Tribunal for reconsideration.

Shu-Tai Cheng
Member, Appeal Division