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

Citation: *F. S. v. Canada Employment Insurance Commission,* 2016 SSTADEI 63

Appeal No. AD-14-364

BETWEEN:

F. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division –Appeal

SOCIAL SECURITY TRIBUNAL MEMBER:: Mark BORER

DATE OF DECISION: February 4, 2016

DECISION Appeal allowed in part

Canada

DECISION

[1] The appeal is allowed in part. The decision of the General Division is varied in accordance with these reasons.

INTRODUCTION

[2] This is an appeal from a decision of the General Division. It concerns a disentitlement for being out of Canada, whether or not the Appellant was available during a certain period, and whether or not the Commission was correct to issue a penalty.

[3] After leave to appeal to the Appeal Division was granted, a teleconference hearing took place. The Appellant appeared and made submissions, but for unknown reasons the Commission did not. As I was satisfied that the Commission had received notice of the hearing, I proceeded in their absence.

THE LAW

[4] 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

[5] The Appellant submits that the General Division "has not reviewed the calculated over payments by EI [sic]", and re-states a number of arguments she raised before the General Division. She argues that the calculations were not done correctly, and asks that her penalty be reduced.

[6] The Commission, in their written submissions, supports the decision of the member and asks that the appeal be dismissed.

[7] In their decision the General Division summarized the evidence and correctly set out the applicable law before turning their attention to applying the law to the facts. After assessing the evidence, the General Division applied a number of cases of the Federal Court of Appeal and dismissed the appeal.

[8] Notwithstanding the submissions of the Appellant that the calculations were done incorrectly, I can find no error in the member's findings and calculations. I note that at the hearing before me the Appellant did not identify any specific error in the decision or explain in what way the calculations were allegedly incorrect.

[9] That being said, it is clear from the face of the record (as I noted in my decision granting leave to appeal) that the General Division 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 during each absence the claimant has been out of Canada, dividing by 24 and dropping the remaining hours.

[10] Although it is not clear from the file the exact hour that the Appellant left or returned to Canada on either of the two trips she took, it would not be in the interests of justice to return this file to the General Division because it would result in considerable expense and delay. Instead, on the balance of probabilities I find that the Appellant left at approximately mid-day and returned at the same time of day for each of the two absences.

This means that the length of the disentitlement must be reduced by one day for each absence, for a total of two days.

[11] Having considered the appeal docket, the submissions of the parties, and the decision of the General Division, I find no reviewable error other than the one I have identified above. In my view, as evidenced by the decision, the General Division conducted a proper hearing, weighed the evidence, made findings of fact, established the correct law, and applied the facts to the law properly (again, except as noted above).

[12] I have found no evidence to support the grounds of appeal invoked. There is no reason for the Appeal Division to intervene except to apply *Picard*.

CONCLUSION

[13] For the above reasons, the appeal is allowed in part. The decision of the General Division is varied in accordance with these reasons.

Mark Borer

Member, Appeal Division