



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Z. H. v. Canada Employment Insurance Commission*, 2016 SSTADEI 78

Appeal No. AD-15-1160

BETWEEN:

**Z. H.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Appeal**

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SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: February 10, 2016

DECISION: Appeal allowed

## **DECISION**

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

## **INTRODUCTION**

[2] On September 22, 2015, 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] This appeal was decided on the record.

## **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 whether or not the Commission correctly allocated certain alleged earnings.

[7] In their written submissions the Commission concedes that even though the General Division member upheld their initial determination, he erred in law in two important ways.

First, that the member applied ss. 36(4) of the *Employment Insurance Regulations* rather than ss. 36(9) as he should have, and second that he (as I noted in my leave to appeal decision) appears to have believed that the allocation of earnings is a discretionary decision of the Commission, which it is not. They ask that a new hearing be ordered, and state their intention to review the record of employment submitted by the Appellant as the Appellant has requested that they do.

[8] It cannot be denied that the General Division member erred in the manner conceded by the Commission. It is also not clear why the member did not address certain alleged errors in the Appellant's record of employment, which the Commission candidly agreed needed to be addressed.

[9] This decision is deeply flawed, and cannot stand. The correct remedy is a new hearing before the General Division.

## **CONCLUSION**

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

*Mark Borer*

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Member, Appeal Division