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

Citation: *E. A. v. Canada Employment Insurance Commission,* 2016 SSTADEI 86

Appeal No. AD-14-317

BETWEEN:

E. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: February 15, 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 and whether or not the Appellant was available during a certain period.

[3] After leave to appeal to the Appeal Division was granted, a teleconference hearing took place. The Appellant and the Commission each appeared and made submissions.

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 law is unfair because it prevents claimants from receiving benefits during the time they are outside of Canada. He notes that the internet and modern telecommunications enable people to perform the same job search whether or not they are outside of Canada. He also notes that the Commission webpage states that a claimant may receive benefits while out of Canada if they meet certain requirements. He

submits that he has met those requirements, and asks that his appeal be allowed so that he can receive benefits.

[6] The Commission supports the decision of the General Division, and asks that the appeal be dismissed. They note that neither the Tribunal nor the Commission has the power to ignore the law, and that no matter what advice is provided by the Commission on their webpage (even if it could be seen as misleading or erroneous) that advice is not binding on the Commission or the Tribunal.

[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 determined that the Appellant was indeed outside of Canada as alleged without meeting any of the exceptions set out in the *Employment Insurance Regulations*. It also determined that the Appellant had not demonstrated that he was available for work during the period in question.

[8] Nothing in the oral or written arguments of the Appellant suggests that the General Division erred in its decision. The Commission is quite correct in saying that the Tribunal has no power to ignore the settled law as it relates to being out of Canada. I also agree that although the Commission's webpage is potentially misleading, I must apply the law and jurisprudence of the Courts in determining the correct outcome of this appeal.

[9] It may well be that the Appellant is correct that modern technology has outpaced the *Employment Insurance Act*. Regardless, I am bound by the law.

[10] 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.

[11] Although it is not clear from the file the exact hour that the Appellant left or returned to Canada, 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. This means that the length of the disentitlement must be reduced by one day.

[12] 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).

[13] 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

[14] 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