



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. C. v. Canada Employment Insurance Commission*, 2016 SSTADEI 102

Appeal No. AD-14-149

BETWEEN:

**C. C.**

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 24, 2016

DECISION: Appeal allowed in part

**Canada** 

## **DECISION**

[1] On consent, the appeal is allowed in part. The decision of the board of referees is rescinded, and the matter is returned to the General Division for reconsideration of the penalty only. The determination of the Commission regarding the allocation of earnings is restored.

## **INTRODUCTION**

[2] On July 9, 2013, a panel of the board of referees (the Board) determined that the appeal of the Appellant from the previous determination of the Commission should be dismissed “with modification”. In due course, the Appellant appealed that decision to the Appeal Division and leave to appeal was granted.

[3] On December 15, 2015, a teleconference hearing was held. Both the Appellant and his representative and the Commission attended and made submissions.

## **ANALYSIS**

[4] This case involves an allocation of earnings and the imposition of a penalty.

[5] In my decision granting leave to appeal, I held at paragraph 6 that:

Although I make no findings on the matter, I note that on the face of the record the Board does not appear to have made findings of fact or stated and applied the proper legal test with regard to the penalty and allocation of earnings, and may thereby have erred.

[6] In his submissions before me, the Appellant’s representative noted the Appellant’s objections to the penalty imposed by the Commission. He also raised additional issues regarding the Appellant’s entitlement to regular benefits and to have his claim antedated. The Appellant does not appeal against the Board (and Commission) finding regarding the allocation of earnings.

[7] The Commission, for their part, now concedes (contrary to their earlier written submissions) that the Board failed to correctly state the law or make appropriate findings of

fact regarding the assessment of the penalty. They ask that a new hearing be ordered on that issue only.

[8] Having considered the record, it is clear that the Board failed to make findings regarding whether or not the Appellant had made a false statement knowingly. I agree with the parties that a new hearing is required so that the General Division can address the issue of the penalty properly.

[9] I also note other significant errors in the decision of the Board.

[10] It is trite law that the member assigned to a file must determine what issues are properly before them and only rule upon those issues. It is also trite law that in employment insurance matters the parties do not establish what those issues are, the member does based upon s. 113 of the *Employment Insurance Act*.

[11] In practice, this means that the Board (and after April 1, 2013, the General Division) is generally limited to examining those issues upon which the Commission has already issued a decision (and after April 1, 2013, a reconsideration decision). I note that the refusal to reconsider an issue (rightly or wrongly) is in itself a decision that may be appealed.

[12] In this case, the Commission determined (in the decision letter found at Exhibit AD2-39) that certain earnings must be allocated and that a penalty for making a false statement knowingly should be imposed.

[13] These were the only two issues under appeal, and therefore the only issues that were within the jurisdiction of the Board to examine.

[14] Unfortunately, the Board attempted to address issues outside of the decision letter. I suspect that they did so at least in part because the Commission submissions to the Board, perhaps in an attempt to make matters clearer, also addressed some of those issues.

[15] Regardless of the reason this was an error of jurisdiction, reviewable on the correctness standard.

[16] To be clear, it may well be that the Appellant is entitled to regular benefits as he alleges and/or should have his claim antedated. That is not for me (or the Board) to say, and I make no finding on those substantive issues. It is the Commission that has been tasked by Parliament with issuing an initial decision on these points, not the Board or the Tribunal. As no such decision was before them, the Board (and I) have no jurisdiction to intervene.

[17] Having done so regardless, the Board erred.

## **CONCLUSION**

[18] Therefore, on consent, the appeal is allowed in part. The decision of the board of referees is rescinded, and the case will be returned to the General Division for reconsideration of the penalty only. The determination of the Commission regarding the allocation of earnings is restored.

*Mark Borer*

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Member, Appeal Division