



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. C. G.*, 2016 SSTADEI 109

Tribunal File Number: AD-13-1150

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

C. G.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: February 25, 2016

DATE OF DECISION: February 26, 2016

REASONS AND DECISION

DECISION

[1] The appeal is allowed, the decision of the board of referees dated June 12, 2013, is rescinded and the appeal of the Respondent before the board of referees is dismissed.

INTRODUCTION

[2] On June 12, 2013, a board of referees determined that:

- The Respondent had sufficient hours of insured employment to qualify for employment insurance benefits pursuant to section 7 of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on June 27, 2013. Leave to appeal was granted on July 30, 2015.

TYPE OF HEARING

[4] The Tribunal held a telephone hearing for the following reasons:

- The complexity of the issue(s) under appeal.
- The fact that the credibility of the parties is not anticipated being a prevailing issue.
- The information in the file, including the need for additional information.
- The requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[5] At the hearing, the Appellant was represented by Carol Robillard. The Respondent was not present although she did received notice of the hearing on September 28, 2015.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (the “*DESD Act*”) states that the only grounds of appeal are the following:

- a. the board of referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b. the board of referees erred in law in making its decision, whether or not the error appears on the face of the record; or
- c. The board of referees 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.

ISSUE

[7] The Tribunal must decide if the board of referees exceeded its jurisdiction and if the board erred in fact and in law when it concluded that the Respondent had sufficient hours of insured employment to qualify for employment insurance benefits pursuant to section 7 of the *Act*.

ARGUMENTS

[8] The Appellant submits the following arguments in support of the appeal:

- The board exceeded its jurisdiction when it made a determination on the issue of total insurable hours accumulated by the Respondent;
- Pursuant to section 90(1) of the *Act*, the jurisdiction to decide the insurability of employment or the quantum of insured hours rests solely with the *Canada Revenue Agency (CRA)*;
- The *CRA* ruling clearly covered the period worked between March 31, 2010 and January 14, 2011. The fact that the Respondent did not actually receive her final

payment from the employer until March 23, 2011 does not change the total insurable hours determined by *CRA*;

- The Federal Court of Appeal has confirmed that the board of referees has no jurisdiction on this matter; If the Respondent had additional information she felt was not considered in the ruling, she should have been directed to further appeal to the *CRA*;
- The information before the board confirmed the Respondent did not meet the requirements of section 7(3) of the *Act*. This requirement does not allow any discrepancy and provides no discretion and the board should have dismissed the appeal.

[9] The Respondent did not submit any arguments against the appeal.

STANDARD OF REVIEW

[10] The Appellant submits that the applicable standard of review for a mixed question of fact and law is reasonableness - *Canada (PG) v. Hallée*, 2008 FCA 159.

[11] The Respondent did not make any representations regarding the applicable standard of review.

[12] The Tribunal acknowledges that the Federal Court of Appeal determined that the standard of review applicable to a decision of a board of referees (now the General Division) or an Umpire (now the Appeal Division) regarding questions of law is the standard of correctness - *Martens c. Canada (AG)*, 2008 FCA 240 and that the standard of review applicable to questions of fact and law is reasonableness - *Chaulk v. Canada (AG)*, 2012 FCA 190, *Canada (PG) v. Hallée*, 2008 FCA 159.

ANALYSIS

[13] The Tribunal proceeded with the appeal hearing in the absence of the Respondent since it was satisfied that she had received proper notice of the hearing on September 28, 2015, in accordance with section 12(1) of the *Social Security Tribunal Regulations*.

[14] Pursuant to section 90(1) of the *Act*, only an officer of the *Canada Revenue Agency* (*CRA*) authorized by the Minister can make a ruling on how many hours an insured person has had in insurable employment.

[15] It is well established in jurisprudence that the *CRA* has exclusive jurisdiction to make a determination on how many hours of insurable employment a claimant possesses for the purposes of the *Act* - *Canada (AG) v. Romano*, 2008 FCA 117, *Canada (AG) v. Didiodato*, 2002 FCA 34, *Canada (A.G.) v. Haberman*, 2000 FCA 150.

[16] Therefore, the Tribunal is of the view that the board of referees exceeded its jurisdiction when it determined that the Respondent had an additional 46 hours of insurable employment.

[17] The Tribunal is therefore justified to intervene and render the decision that should have been rendered by the board of referees.

[18] The evidence before the board of referees shows that the Respondent had insufficient hours of insurable employment to qualify for regular benefits effective January 16, 2011. As a new entrant/reentrant (NERE) to the workforce, 910 insurable hours were needed to qualify pursuant to section 7(3) of the *Act*. Unfortunately for the Respondent, she only had 888 insurable hours following a *CRA* ruling dated April 27, 2011.

[19] The requirements of the *Act* do not allow any discrepancy and provide no discretion and the board should have dismissed the Respondent's appeal - *Canada (AG) v. Levesque*, 2001 FCA 304.

CONCLUSION

[20] The appeal is allowed, the decision of the board of referees dated June 12, 2013, is rescinded and the appeal of the Respondent before the board of referees is dismissed.

Pierre Lafontaine
Member, Appeal Division