



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. F. S.*, 2016 SSTADEI 132

Tribunal File Number: AD-13-1179

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

F. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal decision

DECISION BY: Pierre Lafontaine

HEARD ON: February 23, 2016

DATE OF DECISION: March 9, 2016

REASONS AND DECISION

DECISION

[1] The appeal is allowed in part and the decision of the board of referees dated March 25, 2013, is set aside only on the issue of outside Canada.

INTRODUCTION

[2] On March 25, 2013, a board of referees determined that:

- A disentitlement was not imposed in accordance with section 37 of the *Employment Insurance Act* (the “*Act*”) and Section 55 of the *Employment Insurance Regulations* (the “*Regulations*”);
- The imposition of a penalty was not justified in accordance with section 38 of the *Act* for making a misrepresentation by knowingly providing false or misleading information to the Commission;
- A notice of violation was not issued in accordance with section 7.1 of the *Act*.

[3] The Appellant requested leave to appeal to the Appeal Division on April 12, 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 and the Respondent was not present although she did receive the notice of hearing on September 26, 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 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.

ISSUE

[7] The Tribunal must decide if the board of referees erred in fact and in law when it concluded that a disentitlement was not imposed in accordance with section 37 of the *Act* and Section 55 of the *Regulations*.

[8] The Appellant is no longer disputing the decision of the board of referees on the issues of penalties and the notice of violation.

ARGUMENTS

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

- The board of referees erred in law when it allowed benefits to a period that the Respondent was outside Canada;
- The Federal Court of Appeal has confirmed that a claimant is subject to a disentitlement under section 37(b) of the *Act* while outside Canada unless she meets one of the exceptions under section 55(1) of the *Regulations*;
- The disentitlement under section 37(b) of the *Act* is applicable for the entire absence, from February 16 to 29, 2012, because the Respondent failed to prove her entitlement to benefits while outside Canada as prescribed under section 55(1) of the *Regulations*;
- The board of referees was not authorized to exclude the Respondent from the application of section 37(b) of the *Act* on the basis that she was able to prove her availability under section 18(a) of the *Act*;
- Jurisprudence confirms the principle that a disentitlement for being outside Canada would still apply even if the claimant proves her availability while outside Canada.

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

STANDARD OF REVIEW

[11] The Appellant submits that the applicable standard of review for questions of law is correctness - *Chaulk v. Canada (AG)*, 2012 FCA 190, *Martin v. Canada (AG)*, 2013 FCA 15.

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

[13] The Tribunal acknowledges that the Federal Court of Appeal determined that the standard of review applicable to a decision of a board of referees or an Umpire regarding questions of law is the standard of correctness - *Chaulk v. Canada (AG)*, 2012 FCA 190,

Martens c. Canada (AG), 2008 FCA 240 and that the standard of review applicable to questions of fact and law is reasonableness - *Canada (PG) v. Hallée*, 2008 FCA 159.

ANALYSIS

[14] 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 26, 2015, in accordance with section 12(1) of the *Social Security Tribunal Regulations*.

[15] The Appellant is only appealing the board's decision with respect to the disentitlement imposed pursuant to paragraph 37(b) of the *Act* and submits that the Respondent met none of the exceptions provided in subsection 55(1) of the *Regulations*.

[16] There is no dispute that the Appellant was outside Canada from February 16 to February 29, 2012. She stated that she left the country as per the recommendation of her doctor because of stress related issues and that she was reachable through her blackberry and laptop (Exhibit AD2-53).

[17] A claimant is subject to a disentitlement under section 37(b) of the *Act* while outside Canada unless she meets one of the exceptions under section 55(1) of the *Regulations*. The availability of a claimant is to be considered only if the claimant meets one of the exceptions under section 55(1) of the *Regulations*.

[18] In the present case, the evidence before the board of referees demonstrates that the Respondent does not meet any of the provisions of subsection 55(1) of the *Regulations*.

[19] Accordingly, the Tribunal finds that the board of referees erred in deciding as it did. The appeal is therefore allowed and the decision of the board of referees is set aside only on the issue of outside Canada.

CONCLUSION

[20] The appeal is allowed in part and the decision of the board of referees dated March 25, 2013, is set aside only on the issue of outside Canada.

[21] The disentitlement under section 37(b) of the *Act* is applicable for the entire absence, from February 16 to 29, 2012.

Pierre Lafontaine
Member, Appeal Division