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

Citation: *T. M. v. Canada Employment Insurance Commission,* 2016 SSTADEI 145

Appeal No. AD-14-168

BETWEEN:

T. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: March 15, 2016

DECISION: Appeal allowed

DECISION

[1] The appeal is allowed. The matter is returned to the General Division for reconsideration.

INTRODUCTION

[2] On February 10, 2014, a General Division member determined that the appeal of the Appellant from the previous determination of the Commission should be dismissed.

[3] In due course, the Appellant appealed that decision to the Appeal Division and leave to appeal was granted.

[4] On November 30, 2015, I issued the following order:

> On November 5, 2015, I adjourned a scheduled hearing because I did not believe that the Appellant had received proper notice. Tribunal staff have since contacted the Appellant, who stated that she had received notice but due to illness was unable to attend. The Appellant also indicated that she wanted her appeal to continue. As it does not appear that the Appellant could attend any future hearing, I believe that it is in the interests of justice to issue a decision on the record rather than hold a new hearing. In the circumstances of this case, the interests of justice also require that the parties be given a final opportunity to make submissions before any decision is made. I therefore order that the parties have until December 21, 2015, to make any further submission they wish. After that date, the parties will be notified of the Tribunal's decision.

[5] The Appellant duly notified the Tribunal that she had no further submissions to make. The Commission also continued to rely upon their previous submissions.

ANALYSIS

[6] Although the legal issues in this case appear to be whether or not the Appellant's claim should be antedated, whether or not the Appellant should be permitted to file reports outside of the timeframe established in the *Employment Insurance Act* (the Act), and

whether or not the Appellant was required to provide a medical note to the Commission, this case actually hinges on jurisdiction.

[7] 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 Act.

[8] In practice, this means that the General Division must review the file before them to determine exactly what Commission decision is under appeal. I note that while this decision is generally contained in a reconsideration letter, the refusal to reconsider an issue (rightly or wrongly) is in itself a decision that may be appealed.

[9] In this case the Appellant, in her submissions to the General Division explaining the nature of her appeal, provided (at Exhibit GD2-4) a Commission reconsideration letter dated September 17, 2013, which states that an undefined request for an antedate which was initially refused on July 26, 2013, was maintained. This is the only reconsideration letter I could locate in the file.

[10] The Appellant also included a Commission decision letter dated September 14, 2013 (found at Exhibit GD2-5). This letter, which was not a reconsideration decision but rather an initial pre-reconsideration decision, explained the refusal of the Commission to pay benefits for a specified period because the Appellant failed to file reports within the timelines set in the Act and did not show good cause for being late. The letter also noted that "you [the Appellant] have already requested Formal Reconsideration [sic] of this issue… Your request is under review".

[11] Upon reviewing the file both the Commission and the General Division member appear to have concluded, not unreasonably, that these two letters were related: an initial decision, followed by a reconsideration decision.

[12] Unfortunately, this was mistaken. As can be seen by the dates in the two letters, they are in fact two separate Commission determinations.

[13] The member (and the Commission, as reflected in their written submissions to the General Division) also appear to have concluded that an additional issue regarding the alleged requirement to provide a medical note was also under appeal, even though no reconsideration decision regarding this was in the file.

[14] Adding to the confusion, the member stated in her decision under the heading "DECISION", at paragraph 2, that:

> The member finds that the Appellant did not demonstrate good cause throughout the entire period of the delay such that her claim for benefits can be regarded as being made on an earlier day.

[15] Then, under the heading "ISSUE", at paragraph 4, the member went on to say that:

> The claimant is appealing the Commission's reconsideration decision regarding the denial of employment insurance benefits because she did not return her reports within the allowable time… and she did not demonstrate good cause for her claim for benefits to be regarded as being made on an earlier day…

[16] Finally, at paragraph 38, the member concluded that:

> The Tribunal finds that the Appellant did not have good cause to delay in getting a medical note in order to qualify for regular EI benefits.

[17] Each of these three statements represents a different legal issue. The first, at paragraph 2, appears to relate to an antedate request for the claim in general. The second, at paragraph 4, appears to relate to a request for the Appellant's reports to be antedated in addition to the claim in general. The third statement, at paragraph 38, is not entirely clear but seems to relate to an alleged requirement to provide a medical note under ss. 49(1) and 50(5) of the Act.

[18] As noted above, the only reconsideration decision before the member concerned an undefined request for an antedate. This is the sole basis for the Tribunal's jurisdiction, and

it was incumbent upon the member to clarify what underlying Commission determination the reconsideration decision was referring to. Having failed to do so, and having rendered a decision on issues not properly before her, she erred in jurisdiction.

[19] The correct remedy for this error is a new hearing before the General Division.

CONCLUSION

[20] The appeal is allowed. The matter is returned to the General Division for reconsideration.

Mark Borer

AppealMember, Appeal Division