



Citation: *J. V. v. Canada Employment Insurance Commission*, 2016 SSTADEI 149

Appeal No: AD-16-328

BETWEEN:

**J. V.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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SOCIAL SECURITY TRIBUNAL MEMBER::: Pierre Lafontaine

DATE OF DECISION: March 15, 2016

## **DECISION**

[1] The appeal is granted and the file is returned to the General Division of the Tribunal (Employment Insurance Section) for a new hearing on the issue of misconduct.

## **INTRODUCTION**

[2] On February 5th, 2016, the General Division of the Tribunal decided that:

- An extension of time for the Appellant to appeal to the General Division of the Tribunal was refused.

[3] The Applicant requested leave to appeal to the Appeal Division on February 19, 2016. Leave to appeal was granted on March 7, 2016.

## **ISSUE**

[4] The Tribunal must decide if the General Division erred in fact and in law when it refused an extension of time to the Appellant to appeal to the General Division.

## **THE LAW**

[5] Subsection 58(1) of 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.

## **STANDARD OF REVIEW**

[6] The parties made no representations to the Tribunal regarding the applicable standard of review.

[7] The grounds of appeal in section 58 of the *DESDA Act* are identical to the grounds of appeal applicable to the former Employment Insurance Umpires in subsection 115(2) of the *Act*. Therefore, the Federal Court of Appeal jurisprudence on the nature of the appeal regarding former EI Umpires is relevant and persuasive.

[8] The Tribunal is of the opinion that the degree of deference the Appeal Division accords to the General Division decisions should be consistent with the deference accorded to the decisions of the former board of referees by the Employment Insurance Umpires. An appeal before the Appeal Division is not an appeal in the usual sense of that word but a circumscribed review – *Canada (AG) c. Merrigan*, 2004 CAF 253.

[9] 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 - *Dunsmuir v. New Brunswick*, 2008 SCC 9, *Canada (PG) v. Hallée*, 2008 FCA 159.

## **ANALYSIS**

[10] The Appellant argues that his appeal before the General Division was not late since he filed a new EI application on October 26, 2015 based on an amended ROE from his employer following an arbitration settlement. His appeal to the General Division was filed on December 2, 2015. He had previously filed an appeal to the General Division that was

set for a hearing but desisted in order to file a new claim based on his amended ROE. He is invoking a ground of natural justice and submits that the General Division rendered a decision without regard to the material before it

[11] The Respondent submits in appeal that a decision in fact had been made on the claim, as stated by the Appellant before the General Division, on November 18, 2015. However, the Respondent erred in not sending the letter and the Appellant was only advised verbally. This is the decision being appealed by the Appellant on December 2, 2015.

[12] Consequently, in the interest of natural justice, the Respondent is of the opinion that the delayed appeal should be allowed. The Respondent submits given the factual nature of the substantive issue under appeal (the disqualification for losing employment due to misconduct) and that the employer may be an interested party to the appeal, this matter should be returned to the General Division pursuant to section 59(1) *DESD Act* to allow all parties to make submissions.

[13] Since the Appellant is appealing a decision made by the Respondent on November 18, 2015, and that his appeal to the General Division of said decision was filed on December 2, 2015, the appeal before the General Division was not late. The Tribunal would like to point out that the General Division was not made aware of this November 18, 2015 decision by the Respondent before rendering its decision on the extension of time to appeal.

[14] Considering the arguments raised by the Appellant, and the position of the Respondent, the Tribunal agrees that the appeal must be granted.

## **CONCLUSION**

[15] The appeal is allowed. The appeal before the General Division of the November 18, 2015, decision was filed within the legal delays by the Appellant.

[16] The case is returned to the General Division of the Tribunal (Employment Insurance Section) for a hearing on the issue of misconduct.

*Pierre Lafontaine*

Member, Appeal Division