



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. C. v. Canada Employment Insurance Commission*, 2016 SSTADEI 175

Tribunal File Number: AD-15-398

BETWEEN:

R. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal decision

DECISION BY: Pierre Lafontaine

HEARD ON: March 29, 2016

DATE OF DECISION: April 4, 2016

REASONS AND DECISION

DECISION

[1] The appeal is dismissed with modification to the start date of the disentitlement, namely that it be effective from November 16, 2013.

INTRODUCTION

[2] On May 30, 2015, the General Division of the Tribunal determined that:

- A disentitlement to benefits was justified, for the period of September 9, 2013 to November 15, 2013, pursuant to subsection 18(1)(a) of the *Employment Insurance Act* (the “*Act*”).

[3] The Appellant requested leave to appeal to the Appeal Division on June 25, 2015. Leave to appeal was granted on September 13, 2015.

ISSUE

[4] The Tribunal must decide if the General Division erred in fact and/or in law when it concluded that a disentitlement to benefits was justified, for the period of September 9, 2013 to November 15, 2013, pursuant to subsection 18(1)(a) of the *Act*.

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.

ANALYSIS

[6] The Appellant submits that the General Division erred since he was referred by an authority designated by the Respondent and that he meets the exception under Section 25 of the *Act*. With the reference code, he made his application for the benefits. If a mistake was made by the provincial government in allowing it in the form of the reference code, then he submits that he should not be paying for their mistake.

[7] With regards to the Appellant's overpayment that resulted from the retro disentitlement imposed from September 9, 2013 to November 15, 2013, the Respondent recommends a partial concession to the start date of the disentitlement. The Respondent recognizes that the Appellant was paid by mistake and that he could not have known at the time that he was paid benefits in error. In these circumstances, once the error is discovered, the Respondent's policy is to make the correction currently. In keeping with the Respondent's reconsideration policy, it is submitted that the start date of the disentitlement be amended to November 16, 2013. As a result, the overpayment would be removed.

[8] In the case in hand, the Appellant was provided a reference code by the Ministry of Social Development and Social Innovation or their delegate. He filed his Employment Insurance claim using the reference code provided by the Province thinking he was approved and Employment Insurance benefits payable. The error was made by the Province acting under the authority delegated by the Respondent.

[9] With this said, the Respondent requests that the Tribunal dismiss the appeal pursuant to section 59(1) of the *DESD Act* with modification to the start date of the disentitlement, namely that it be effective from November 16, 2013.

[10] The Appellant agrees with the request of the Respondent.

[11] In light of the above, and after review of the file, the Tribunal agrees to dismiss the appeal with modification to the start date of the disentitlement, namely that it be effective from November 16, 2013.

CONCLUSION

[12] The appeal is dismissed with modification to the start date of the disentitlement, namely that it be effective from November 16, 2013.

Pierre Lafontaine

Member, Appeal Division