



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. S. v. Canada Employment Insurance Commission*, 2016 SSTADEI 176

Tribunal File Number: AD-15-583

BETWEEN:

**R. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division– Appeal decision**

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DECISION BY:: Pierre Lafontaine

HEARD ON: March 31, 2016

DATE OF DECISION: April 4, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On June 16, 2015, the General Division of the Tribunal decided that:

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

[3] The Appellant requested leave to appeal to the Appeal Division on July 16, 2015. Leave to appeal was granted on September 17, 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] The Appellant was present at the hearing. The Respondent was represented by Warren Dinham.

## **THE LAW**

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (*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 General Division erred in fact and/or in law when it concluded that an extension of time for the Appellant to appeal to the General Division Tribunal was to be refused.

## **ARGUMENTS**

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

- Her appeal was filed on time and she was only missing the reconsideration decision. She promptly sent the missing information during the holiday period. The General Division accused reception of the reconsideration decision on January 6, 2015;
- The General Division now had her complete appeal package, and it was clear that she wanted to pursue the appeal, and that the explanation for the delay was not only matter of fact, it was also stated in her fax;

- It was a miscarriage of justice for the General Division not to have considered her appeal.

[9] The Respondent submits the following arguments against the appeal:

- A breach of natural justice has occurred and as such the Appellant has established grounds for her appeal under section 58(1) ( a) of the *DHRSD Act*;
- In the interest of natural justice, the Respondent recommends that the case be returned to the General Division of the Social Security Tribunal to be heard as a case *de novo*.

## **STANDARD OF REVIEW**

[10] The Appellant did not make any representations regarding the applicable standard of review.

[11] The Respondent submits that the Federal Court of Appeal has determined that the standard of review applicable to questions of law is the standard of correctness and that the standard of review applicable to questions of mixed fact and law is reasonableness - *Martens vs Canada*, 2008 FCA 240; *Canada vs Hallee*, 2008 FCA 159.

[12] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (AG) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that when the Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court.

[13] The Federal Court of Appeal further indicates that not only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of "federal boards", for the Federal Court and the Federal Court of Appeal.

[14] The Court concluded that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *DESD Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69. In particular, it must determine whether the General Division "erred in law in making its decision, whether or not the error appears on the face of the record" (paragraph 58(1)(b) of the *DESD Act*).

[15] The mandate of the Appeal Division of the Social Security Tribunal as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada*, 2015 FCA 274.

## **ANALYSIS**

[16] The Appellant filed her appeal at the General Division on December 15, 2014 within 30 days from the date she received the reconsideration of employment insurance decision dated November 14, 2014.

[17] The Appellant then received a letter dated December 24, 2014 from the General Division stating the Appeal applications she sent to the General Division was incomplete and was asked to provide copy of the Reconsideration of Employment Insurance Decision. She promptly sent the information to the General Division on January 6, 2015.

[18] The legislation has given the discretionary power to extend the time for appeal to the General Division.

[19] In the present matter, the General Division concluded that the Appellant failed to meet one of the criteria for which an extension may be granted. The General Division found that the Appellant did not have an arguable case. It was clear however that the Appellant showed a continuous intention to pursue her appeal, that there was a reasonable explanation for her delay and that there was no prejudice to the other party.

[20] In order for the Appellant to succeed in her appeal, she must show that the General Division improperly exercised its discretion to deny the extension of time. An improper exercise of discretion occurs when a Member gives insufficient weight to

relevant factors, proceeds on a wrong principle of law, erroneously misapprehends the facts, or where an obvious injustice would result.

[21] The Tribunal finds that the General Division did not exercise its discretion properly in the present case. The denial of the extension results in an obvious injustice - *X (Re)*, 2014 CAF 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[22] Furthermore, on May 1<sup>st</sup>, 2015, six weeks prior to the decision of the General Division, a practice direction was issued which applies to incomplete notices of appeal filed with the Tribunal's Employment Insurance Section of the General Division. According to said practice, if the General Division receives all the missing information within 30 days from the date of the letter, the appeal will be deemed to have been filed on the date that the incomplete notice of appeal was received by the Tribunal.

[23] The Appellant filed her appeal within the 30 days of the reception of the reconsideration decision and she filed the missing information to the General Division on January 6, 2015, well within thirty days of the request that was made to her on December 24, 2014.

[24] Applying the above practice direction of the Tribunal to the present case, the Appeal of the Appellant would have been deemed filed within the legal delays.

[25] For the above mentioned reasons, the appeal will be allowed, the extension of time to file the appeal at the General Division will be granted and the file returned to the General Division for a hearing.

## **CONCLUSION**

[26] The appeal is allowed, the extension of time to file the appeal to the General Division is granted and the file returned to the General Division for a hearing.

*Pierre Lafontaine*

Member, Appeal Division