



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v. M. B.*, 2016 SSTADEI 166

Tribunal File Number: AD-14-391

BETWEEN:

**Canada Employment Insurance Commission**

Appellant

and

**M. B.**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: March 29, 2016

DECISION: Appeal allowed

## **DECISION**

[1] The appeal is allowed. The decision of the General Division member is rescinded, and the determination of the Commission is restored.

## **INTRODUCTION**

[2] On July 14, 2014, a General Division member allowed the Respondent's appeal against the previous determination of the Commission.

[3] In due course, the Commission filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] On December 15, 2015, a teleconference hearing was held. Both the Commission and the Respondent attended and made submissions.

## **THE LAW**

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (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] This case involves the correct calculation of the Respondent's benefit rate.

[7] The Commission submits that the General Division member erred by failing to properly calculate the Respondent's benefit rate. Specifically, they submit that although the member stated the law correctly, she erred in applying the law and further erred in overturning the Commission determination. They ask that their appeal be allowed.

[8] The Respondent argues that the Commission has been "snowballing" him, and that he has not been treated fairly by the Canada Revenue Agency or by the Commission. He maintains that there was something wrong with the initial benefit rate determined by the Commission, but does not specify what.

[9] In her decision, the member found that:

"...the Commission used the first nine weeks of insurable earnings in [the Respondent's] employment history to calculate his benefit rate when they should have used the last nine weeks of insurable earnings. The Tribunal believes that this will increase the amount of insurable earnings used to calculate [the Respondent's] benefit rate in turn, will increase the benefit amount".

[10] The General Division member then allowed the appeal.

[11] It is trite law that in cases where it is alleged that the calculations have been done incorrectly, the burden of proof is on the appellant/claimant to show how the rate was incorrect. After reviewing the evidence and submissions, it then falls to the General Division member to determine what the correct rate is. If the appellant/claimant explains this as required, then there can be no confusion as to what the benefit rate should be since the appellant/claimant will have made detailed submissions that can be evaluated and potentially adopted by the General Division member.

[12] In this case, although the Respondent objected to the various determinations made by the Commission, there was no suggestion as to what the benefit rate should actually be. In argument before me, the Respondent additionally failed to set out any reason why the rate as initially determined by the Commission was incorrect.

[13] Unfortunately, having found that the Commission calculations were wrong because they used the wrong weeks of insurable income, the member failed to state what the correct benefit rate was. Given that the Commission maintained (and still maintains) that they had already made their determinations using the correct weeks of insurable income (the same weeks identified by the General Division member), it is not clear to me how the Commission was supposed to carry out the General Division decision without coming to the same conclusions they had already come to.

[14] This is a reviewable error, as every decision must be intelligible and clear as to how it should be carried out.

[15] In the circumstances, it is in the interests of justice that I give the decision that the General Division member should have given rather than return this file for a new hearing.

[16] The Commission has adjusted their calculations in this file several times prior to the appeal to the General Division. While I have no doubt that this was confusing for the Respondent, there is no evidence to suggest that the final number arrived at by the Commission (the determination under appeal here) is not correct.

[17] Having considered their detailed calculations submitted as part of this appeal, I find that the Commission calculations are in conformity with the law and jurisprudence.

[18] As such, the General Division decision cannot stand.

## **CONCLUSION**

[19] For the above reasons, the appeal is allowed. The decision of the General Division member is rescinded, and the determination of the Commission is restored.

*Mark Borer*

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Member, Appeal Division