



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. S. P.*, 2016 SSTADEI 256

Tribunal File Number: AD-16-220

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

S. P.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre LAFONTAINE

DATE OF DECISION: May 12, 2016

DECISION: APPEAL ALLOWED

DECISION

[1] The appeal is allowed.

INTRODUCTION

[2] On November 16, 2012, a Board of Referees unanimously allowed the Respondent's appeal regarding the state of unemployment within the meaning of section 9 and subsections 11(1) and 11(4) of the *Employment Insurance Act* (Act). On December 5, 2012, the Appellant filed an appeal of the Board of Referees' decision to the Office of the Umpire. On April 1, 2013, the file was transferred to the Tribunal's Appeal Division, which dismissed the Appellant's appeal on August 28, 2014. Then, on October 2, 2014, the Attorney General of Canada, on behalf of the Appellant, filed before the Federal Court of Appeal an application for judicial review, which was granted on November 4, 2015. Furthermore, the Federal Court of Appeal rescinded the decision rendered by the Tribunal's Appeal Division and referred the matter back in order to render a new decision based on the reasons of the decision. Leave to appeal was denied by the Supreme Court of Canada on April 21, 2016.

THE LAW

[3] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

- (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 or order, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[4] Given that the Federal Court of Appeal has rescinded the Appeal Division's decision that resulted in a judicial review, and ordered that a new decision be rendered, the Tribunal's Appeal Division must dispose of the appeal.

ISSUE

[5] Was the disentitlement imposed on the Respondent by the Appellant in accordance with section 9 and subsections 11(1) and 11(4) of the Act applicable?

ANALYSIS

[6] In light of the decision and grounds supporting the Federal Court of Appeal decision rendered on November 4, 2015, the Board of Referees' decision of November 16, 2012 is rescinded. The Appellant's decision is restored. This decision states that a disentitlement should be imposed on the Respondent in accordance with section 9 and subsections 11(1) and 11(4) of the Act because he failed to prove that he was unemployed.

CONCLUSION

[7] The appeal is allowed.

Pierre Lafontaine

Member, Appeal Division