



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. S. v. Canada Employment Insurance Commission*, 2016 SSTADEI 272

Tribunal File Number: AD-16-123

BETWEEN:

H. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

DECISION BY:: Shu-Tai Cheng

DECIDED On the Record

DATE OF DECISION: May 26, 2016

REASONS AND DECISION

INTRODUCTION

[1] On April 1, 2016, the Appeal Division (AD) of the Social Security Tribunal of Canada (Tribunal) granted leave to appeal on the grounds that the GD may have based its decision on an error of mixed fact and law.

[2] The Tribunal requested the parties' submissions on the mode of hearing, whether one is appropriate and, also, on the merits of the appeal.

[3] The Appellant and the Respondent (Commission) filed submissions.

[4] This appeal proceeded by On the Record for the following reasons:

- a) The AD Member has determined that no further hearing is required; and
- b) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[5] Whether the GD made an error of mixed fact and law in arriving at its decision.

[6] If yes, the AD of the Tribunal must decide whether it should dismiss the appeal, give the decision that the GD should have given, refer the case to the GD for reconsideration or confirm, rescind or vary the decision of the GD.

THE LAW

[7] According to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD 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.

LEAVE GRANTED ON ONE ISSUE

[8] Leave to appeal was granted on the basis that the Appellant had set out reasons which fall into the enumerated grounds of appeal and that at least one of the reasons had a reasonable chance of success, specifically, under paragraphs 58(1)(b) and (c) of the DESD Act.

[9] Leave to appeal was granted on only one issue. The decision granting leave to appeal stated:

[19] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. Here, the Applicant has identified grounds and reasons for appeal which fall into the enumerated grounds of appeal, specifically whether the *Picard* case was properly applied to his situation.

[20] On the ground that there may be an error of mixed fact and law, I am satisfied that the appeal has a reasonable chance of success.

SUBMISSIONS

[10] The Appellant submitted that: “My ticket to India clearly says that I left Canada only at 6.15pm on 25th Feb 2014 and came back at 1.55pm on 27th Mar 2014. But the commission has not paid me for both 25th Feb 2014 and 27th mar 2014. The ticket copy is enclosed.” He also made submissions on an issue for which leave to appeal was not granted (number of entitlement weeks).

[11] The Respondent submitted that the issue of outside of Canada was decided in a separate decision of the GD (GE-15-1839) which was not appealed, and on the issue of entitlement weeks, the AD refused leave to appeal.

ANALYSIS

[12] Leave to appeal was granted on one limited issue: whether *Canada (AG) v. Picard*, 2014 FCA 46 was properly applied to this matter.

[13] The GD decision in GE-15-1839 dealt with the outside of Canada issue, and it included the application of the *Picard* case to the situation of this Appellant. The GD decision in GE-15- 1839 was not appealed.

[14] Leave to appeal was not granted on the issue of the number of entitlement weeks. The decision of the GD in GE-15-3176 stands.

CONCLUSION

[15] The appeal is dismissed.

Shu-Tai Cheng
Member, Appeal Division