



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. J. S.*, 2016 SSTADEI 283

Tribunal File Number: AD-13-1180

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

J. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY:: Mark BORER

HEARD ON: May 10, 2016

DATE OF DECISION: May 30, 2016

DECISION

[1] The appeal is allowed. The matter is returned to the General Division for reconsideration.

INTRODUCTION

[2] On April 23, 2013, a panel of the board of referees (the Board) 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 May 10, 2016, a teleconference hearing was held. The Commission attended and made submissions, but the Respondent did not. As a Canada Post signature card indicated that the Respondent personally signed for the notice of hearing, I was satisfied that he received proper notice and proceeded in his absence.

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 [or the Board] failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division [or the Board] erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division [or the Board] 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 is a case involving the allocation of pension payments.

[7] The Commission submits that the Board erred by failing to make any findings as to whether or not the Respondent's pension should be allocated. They also now submit that the Respondent's claims that he should not have been enrolled in a pilot project and that he should have been permitted to withdraw from that pilot project should have been considered and ruled upon by the Board because the determination regarding the pilot project was part of the Commission decision under appeal. They ask that the case be returned to the General Division for a new hearing.

[8] The Respondent has made no submissions and, as noted above, did not attend the hearing.

[9] Unfortunately, even a casual reading of the Board decision shows that the Board did indeed err in the manner alleged by the Commission. Because the Board failed to make findings of law and fact as required on the pilot project issue as well as the allocation issue, this decision cannot stand.

[10] The correct remedy is a new hearing before the General Division so that the Respondent can make his case in full.

CONCLUSION

[11] For the above reasons, the appeal is allowed. The matter is returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division