



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. G. v. Canada Employment Insurance Commission*, 2016 SSTADEI 332

Tribunal File Number: AD-15-1342

BETWEEN:

N. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: June 24, 2016

DECISION

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

INTRODUCTION

[2] Previously, a member of the General Division determined that the Appellant's appeal should be dismissed. In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

THE LAW

[3] 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

[4] This appeal concerns whether or not the General Division member correctly determined the Appellant's residence for the purposes of his employment insurance claim.

[5] If the Appellant was resident in Chamcook, New Brunswick as the Appellant alleges, then he had sufficient hours to qualify for benefits. On the other hand, if the Commission is correct that he lived in Fredericton, New Brunswick then he does not.

[6] In his decision, the General Division member determined that the Appellant lived in Moncton, New Brunswick.

[7] Having reviewed the file, it is not clear to me on what basis this conclusion was reached. Neither party suggested that the Appellant lived in Moncton, nor can I find any reference to Moncton in the evidence.

[8] The Commission, in their submissions, admits that this finding was an error but argues that this error is not prejudicial to the Appellant. They maintain their position that, as evidenced by the address given by the Appellant in his initial application for benefits, he was resident in Fredericton and thus did not have sufficient hours to qualify for benefits.

[9] I cannot agree that the General Division error was harmless. Residency is of central importance to the determination of any benefit claim, and needs to be resolved in order to properly determine if the initial Commission determination at issue here is correct.

[10] The correct remedy for this error is a new hearing before the General Division.

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