



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 328

Tribunal File Number: AD-15-998

BETWEEN:

M. M.

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] On April 8, 2015, I (like Umpire Marin before me) ordered that this matter be returned to the General Division solely for reconsideration of the various Commission calculations. On July 29, 2015, a member of the General Division determined that the Applicant's appeal should be dismissed.

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

[4] This is the Applicant's third appeal to the Appeal Division or its predecessor tribunal. This appeal was decided on the record.

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 appeal concerns whether or not the Commission correctly allocated certain alleged earnings.

[7] In their written submissions the Commission concedes that the General Division member “failed to make a finding on the calculations and does not provide a rationale for having accepted the [Commission’s] calculation[s]”. They ask, however, that I uphold their calculations as correct and provide considerable submissions in support of their position.

[8] It cannot be denied that the General Division member erred in the manner conceded by the Commission. This is doubly unfortunate in light of the fact that this matter has already been returned for reconsideration twice.

[9] While I understand and fully appreciate the Commission request that I give the decision that the General Division should have given, I decline to do so. The Appellant deserves their chance to give evidence and make their case in full as to why the calculations are flawed. For this reason, the correct remedy is a new hearing before the General Division.

[10] I note, however, that the sole issue to be determined by the General Division is whether or not the calculations have been done correctly. I remind the Appellant that Umpire Marin has already determined that the earnings must be allocated by the Commission, and the General Division has no jurisdiction to decide otherwise.

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