



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. A. T.*, 2016 SSTADEI 377

Tribunal File Number: AD-13-1182

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

A. T.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON June 9, 2016

DATE OF DECISION: July 18, 2016

DECISION

[1] The appeal is allowed. The decision of the board of referees is rescinded and the determination of the Commission is restored.

INTRODUCTION

[2] Previously, a panel of the board of referees (Board) made a number of findings, including allowing the appeal of the Respondent against the previous determination of the Commission that he did not qualify for regular benefits.

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

[4] On June 9, 2016, a teleconference hearing was held. The Commission attended and made submissions, but the Respondent did not.

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.

[6] As previously determined by the Federal Court of Appeal in *Canada (Attorney General) v. Jewett*, 2013 FCA 243, *Chaulk v. Canada (Attorney General)*, 2012 FCA 190, and many other cases, the standard of review for questions of law and jurisdiction in an

appeal of a Board decision is that of correctness, while the standard of review for questions of fact and mixed fact and law is reasonableness.

ANALYSIS

[7] This case revolves around the correct determination as to whether or not the Respondent's qualifying period can be extended.

[8] As a preliminary matter, I note that the Respondent did not attend the hearing. This is not surprising, as the Tribunal efforts to locate him at the address he provided resulted in the notice of hearing being returned to the Tribunal because the Respondent no longer lived at that address. Efforts to contact him using the phone number he provided similarly failed, and he did not provide the Tribunal with an email address.

[9] This is problematic, as the *Social Security Tribunal Regulations* do not allow me to proceed with the hearing without being satisfied that all parties have received notice. For the above reasons, I am not satisfied that the Respondent has received notice as required.

[10] It is clear to me that to proceed without notifying the Applicant is not permitted by the Regulations. It is also clear to me that Tribunal staff have taken reasonable steps to locate the Applicant.

[11] Although an available option would be simply to adjourn the appeal until further information becomes available, this is impractical as well as prejudicial to the Commission. They are entitled to have the matter resolved, one way or the other, and there is little value in maintaining "orphan" files indefinitely.

[12] According to s. 6 of the Regulations, all parties must notify the Tribunal of any change in their contact information without delay. The Applicant has failed to do so.

[13] I therefore find that the Respondent has failed to comply with s. 6 of the Regulations, and order that this matter proceed without any further requirement to notify the Respondent. I do not make this decision lightly, and do so in the belief that this decision complies with

my regulatory requirement to secure the just and most expeditious determination of appeals and applications as the considerations of fairness and natural justice permit.

[14] On the merits of the matter, the Commission submits that the Board erred by extending the Respondent's qualifying period beyond the start of the Respondent's previous claim for benefits. In doing so, the Commission argues that the Board acted contrary to the *Employment Insurance Act* (Act).

[15] Having considered the decision, I note that the Board does not appear to have considered or applied ss. 8(1) of the Act. If they had, it would have been clear that no extension of the Respondent's qualifying period was possible because to do so would have extended it beyond the start date of the Respondent's previous claim, which the Act prohibits.

[16] Because the Board failed to identify and apply the correct law, this decision cannot stand.

CONCLUSION

[17] For the above reasons, the appeal is allowed. The decision of the Board is rescinded and the determination of the Commission is restored.

Mark Borer

Member, Appeal Division