Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *M. B. v. Canada Employment Insurance Commission,* 2016 SSTADEI 379

Tribunal File Number: AD-16-431

BETWEEN:

M. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Shu-Tai Cheng

DECISION On the Record

DATE OF DECISION: July 18, 2016

Canada

REASONS AND DECISION

INTRODUCTION

[1] On February 12, 2016, the General Division ("the DG") of the Social Security Tribunal ("the Tribunal") allowed the appellant's appeal in part.

[2] An application for leave to appeal before the Appeal Division ("the AD") was filed on March 15, 2016, and leave to appeal was granted on May 18, 2016.

[3] Leave to appeal was granted solely on the issue of reconsideration of the claim, specifically the analysis of the effect of the delay between the claim for benefits and reconsideration of the claim.

[4] This appeal proceeded in the form of a hearing on the merits for the following reasons:

(a) the Member determined that no hearing was necessary;

(b) the Respondent conceded the appeal on the issue of the reconsideration under section 52 of the *Employment Insurance Act* ("the EI Act"); and

(c) the need to proceed as informally and quickly as possible in accordance with the criteria of the Social Security Tribunal's rules relating to the circumstances and considerations of fairness and natural justice.

ISSUE

[5] The Tribunal's AD 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.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Skills Development* ("the DESD Act") states that the only grounds of appeal are the following:

(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.

[7] Pursuant to subsection 59(1) of the DESD Act, the AD may dismiss the appeal, give the decision that the GD should have given, refer the matter back to the GD for reconsideration in accordance with any directions that the AD considers appropriate or confirm, rescind or vary the decision of the GD in whole or in part.

[8] Subsection 52(5) provides that, if, in the opinion of the Commission, a false or misleading statement or representation has been made in connection with a claim, the Commission has 72 months within which to reconsider the claim.

SUBMISSIONS

[9] The Respondent concedes the appeal. The Commission failed to notify the appellant and to inform him of the specific nature of the false statements that made possible the reconsideration of the claim for benefits.

ANALYSIS

[10] The GD determined that:

(a) the Applicant is considered a self-employed person or an individual engaged in a business within the meaning of subsection 30(5) of the *Employment Insurance Regulations* (and that the presumption under subsection 39(1) was not overcome and that the claimant worked full weeks starting on August 12, 2007); and

(b) the Applicant did not knowingly make false or misleading representations.

[11] The GD noted that "the Commission did not impose a penalty on the claimant because more than 36 months had elapsed between the decision rendered following the Commission's investigation and the claim for benefits" and that section 41.1 of the EI Act "provides that a warning may be issued within 72 months after the day on which the act or omission occurred." The GD found that the Applicant had not knowingly made false or misleading statements, but it did not analyze the effect of the delay between the claim for benefits and the reconsideration of the claim.

[12] According to subsection 52(5) of the EI Act, the time limit for reconsidering a claim may be extended to 72 months if, in the opinion of the Commission, a false or misleading statement or representation has been made in connection with the claim.

[13] Where the Commission exercises this power, it has a duty to tell the claimant precisely why, for the specific purposes of the exercise it undertakes under that subsection, it considers the statement false (*Canada (AG) v. Langelier*, 2002 FCA 157, and *Canada (AG) v. Dussault*, 2003 FCA 372).

[14] In this case, all the weeks were re-examined after more than 36 months. The Respondent recently confirmed that it failed to notify the appellant and to inform him of the specific nature of the false representations that led to the reconsideration of the claim.

[15] As the GD did not analyze the effect of the delay between the claim for benefits and the reconsideration of the claim, it rendered a decision in which it erred in law.

[16] The relevant facts are not in dispute. Furthermore, the Respondent concedes the appeal. Consequently, I can give the decision that the GD should have given.

[17] Having reviewed the submissions of the parties and the file, I allow the appeal.

CONCLUSION

[18] The appeal is allowed.

Shu-Tai Cheng
Member, Appeal Division