



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *L. C. v. Canada Employment Insurance Commission*, 2016 SSTADEI 424

Tribunal File Number: AD-16-190

BETWEEN:

**L. C.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

HEARD ON: July 19, 2016

DATE OF DECISION: August 17, 2016

## **REASONS AND DECISION**

### **DECISION**

[1] The Tribunal allows the appeal, grants an extension of time for an appeal before the General Division, and refers the matter back to the General Division so that a new hearing may be held on each of the issues.

### **INTRODUCTION**

[2] On January 5, 2016, the Tribunal's General Division found that the appeal before the Tribunal's General Division had not been brought within the time limit set out in subsection 52(2) of the *Department of Employment and Social Development Act* (DESD Act).

[3] On January 19, 2016, the Appellant filed an application for leave to appeal to the Appeal Division. Leave to appeal was granted on February 15, 2016.

### **TYPE OF HEARING**

[4] The Tribunal determined that the appeal would be heard via teleconference for the following reasons:

- The complexity of the issue or issues;
- The parties' credibility was not a key issue;
- The cost-effectiveness and expediency of the hearing choice;
- The need to proceed as informally and quickly as possible while complying with the rules of natural justice.

[5] The Appellant attended the hearing with his representative, Mr. Yves Langlois. The Respondent was represented by Louise Laviolette.

## **THE LAW**

[6] Subsection 58(1) of 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 or order, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

## **ISSUE**

[7] Did the General Division err in finding that the Appellant's appeal before the Tribunal's General Division had not been brought within the time limit set out in subsection 52(2) of the DESD Act?

## **STANDARDS OF REVIEW**

[8] The parties made no submissions to the Tribunal concerning the standard of judicial review applicable to the General Division's decision.

[9] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (A.G.) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that when the Appeal Division "acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court."

[10] The Federal Court of Appeal further indicated that:

Not only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show

deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of "federal boards", for the Federal Court and the Federal Court of Appeal.

[11] The Federal Court of Appeal concludes by emphasizing that "[w]here it hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act."

[12] The mandate of the Appeal Division of the Tribunal described in *Jean* was subsequently confirmed by the Federal Court of Appeal in *Maunder v. Canada (A.G.)*, 2015 FCA 274.

[13] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, the Tribunal must dismiss the appeal.

## **ANALYSIS**

[14] The Appellant submits that the General Division erred in law in that it did not take into consideration the reasons for which he had not been able to complete his file within the prescribed time limit. He argues that he had never received a letter asking him to complete his file. He was therefore under the impression that his appeal had effectively been filed with the General Division.

[15] The Respondent is of the opinion that the Appellant was not able to provide the information missing from his notice of appeal because he had not received a notice of incomplete file on June 23, 2014. It respectfully asks the Tribunal to refer the file back to the General Division so that the Appellant's case can be heard on the merits.

[16] Subsection 52(1) of the DESD Act provides that an appeal of a decision must be brought to the General Division in the prescribed form and manner and within, (a) in the

case of a decision made under the *Employment Insurance Act*, 30 days after the day on which it is communicated to the appellant.

[17] On March 5, 2014, the Respondent denied the Appellant's request for reconsideration. On April 22, 2014, the Appellant filed a notice of appeal with the Tribunal's General Division. In this notice of appeal, the Appellant states that he received the Respondent's decision regarding his request for reconsideration on March 7, 2014.

[18] On June 23, 2014, the General Division sent the Appellant a letter notifying him that his appeal was incomplete, and that the following was required to complete his appeal:

- a copy of the reconsideration decision being appealed;
- the date on which the Appellant was notified of the reconsideration decision.

[19] However, the notice of appeal before the General Division clearly states the date on which the Appellant was notified of the reconsideration decision, that is, March 7, 2014.

[20] The Respondent's reconsideration decision played an integral part in the appeal file before the General Division (GD3-149 and GD3-150). It is surprising and unusual that the appeal file was issued by the Respondent only on December 22, 2015, that is over 20 months after the Appellant had filed a notice of appeal before the General Division. The reconsideration decision was certainly in the appeal file when the General Division issued its decision on January 5, 2016. Had the appeal file been issued routinely to the Tribunal, the Respondent's reconsideration decision would have certainly been included in the appeal file within the prescribed one-year time limit under subsection 52(2) of the DESD Act.

[21] Given the unusual circumstances of this file, the Tribunal is of the opinion that, in compliance with the principles of natural justice and the power conferred to it by paragraph 3(1)(b) of the Social Security Regulations, the Appellant should be considered exempt from the obligation to include in the file a copy of the Respondent's reconsideration decision.

[22] Given that the Tribunal considers that the Appellant's appeal before the General Division was thus complete on April 22, 2014, it must now determine whether the appeal

was entered within the 30-day period following the date on which the Appellant was notified of the reconsideration decision.

[23] The Appellant filed his notice to appeal before the General Division on April 22, 2014. In his notice of appeal, the Appellant states that he received the Respondent's reconsideration decision on March 7, 2014. His appeal is therefore late given that it was filed more than 30 days after receiving the reconsideration decision.

[24] Did the General Division exercise its discretion in a judicial manner by refusing to grant the extension of time to appeal? The Tribunal is of the opinion that the General Division failed to exercise its discretion because it concluded that the appeal was prescribed in accordance with subsection 52(2) of the DESD act.

[25] The Tribunal is therefore justified to intervene, and it finds that it is in the interest of justice to grant a deadline extension to the application for appeal before the General Division - *X (Re)*, 2014 FCA 249; *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

## **CONCLUSION**

[26] The Tribunal allows the appeal, grants an extension of time for an appeal before the General Division, and refers the matter back to the General Division so that a new hearing may be held on each of the issues.

Pierre Lafontaine  
Member, Appeal Division