



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. K. v. Canada Employment Insurance Commission*, 2016 SSTADEI 458

Tribunal File Number: AD-16-816

BETWEEN:

J. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: September 1, 2016

DECISION

[1] On consent, the appeal is allowed. The matter is returned to the General Division for reconsideration in accordance with these reasons.

INTRODUCTION

[2] Previously, a member of the General Division issued a decision refusing the Appellant's request for an extension of time to appeal. In due course, the Appellant filed an appeal of this decision with the Appeal Division and leave to appeal was granted.

[3] This appeal was decided on the record.

THE LAW

[4] 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

[5] As noted above, this is an appeal from a General Division decision refusing an extension of time.

[6] The Appellant asks that her appeal be allowed because, contrary to the findings of the General Division member, she always intended to appeal and asked the Commission about how to do so.

[7] The Commission agrees with the Appellant, and asks that the matter be returned to the General Division for reconsideration because the member did not consider all the evidence in the file in coming to his conclusions.

[8] Unfortunately, I find myself in agreement with the parties.

[9] At paragraph 17 of the General Division decision the member found that the Appellant did not make any enquiries with the Commission until January 26, 2016.

[10] This is contradicted by the letter sent by the Commission to the Appellant on January 15, 2016 (found at GD2 – 2) responding to an attempt on the part of the Appellant to file an appeal. The decision also does not address the Appellant's submissions that she spoke to the Commission and was told that appeals were no longer possible.

[11] As I noted in the leave to appeal decision, I suspect that she was actually told that appeals were no longer accepted by Service Canada or the Commission, but I fully understand how this might be confusing to an unrepresented litigant.

[12] It was entirely open to the member to exercise his discretion and refuse to grant an extension of time. However, the member cannot do so without properly exercising that discretion by considering the entirety of the evidence and submissions in the file.

[13] Because of the above, I find that the member failed to properly exercise his discretion and for this reason his determination cannot stand.

CONCLUSION

[14] On consent, the appeal is allowed. The matter is returned to the General Division for reconsideration in accordance with these reasons.

Mark Borer

Member, Appeal Division