



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 523

Tribunal File Number: AD-16-1089

BETWEEN:

B. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: October 25, 2016

DECISION

[1] On consent, the appeal is allowed. The matter will be returned to the General Division for reconsideration.

INTRODUCTION

[2] Previously, a member of the General Division determined that the Appellant's appeal should be dismissed. In due course, the Appellant filed an application for leave to appeal 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] This appeal concerns whether or not the Appellant's claim should be antedated (backdated).

[6] The Appellant argues that the General Division member did not properly consider her argument that by consulting a lawyer, and relying upon the advice received, she had

acted as a reasonable person would have done to educate themselves as to their rights and responsibilities and therefore shown good cause for her delay.

[7] The Commission, although they continue to support the ultimate conclusion reached by the General Division member, concede that the member erred as alleged. For this reason, they do not oppose a new General Division hearing.

[8] It is true that in his decision the General Division member failed to address the arguments raised by the Appellant. I agree with the parties that this is an error. This decision cannot stand.

CONCLUSION

[9] On consent and for the above reasons, the appeal is allowed. The matter is returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division