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

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. M. L.*, 2016 SSTADEI 526

Tribunal File Number: AD-16-763

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

M. L.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: October 18, 2016

DATE OF DECISION: October 25, 2016

REASONS AND DECISION

DECISION

[1] The appeal is allowed, the decision rendered by the General Division on May 11, 2016, is rescinded, and the appeal of the Respondent before the General Division is dismissed.

INTRODUCTION

[2] On May 11, 2016, the Tribunal's General Division concluded that the Respondent's claim for Employment Insurance benefits beginning on May 25, 2014, could be cancelled and that the claim for Employment Insurance could be antedated to January 1, 2015.

[3] On June 2, 2016, the Appellant filed an application for leave to appeal before the Appeal Division. Leave to appeal was granted on June 24, 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 was represented by Julie Meilleur. The Respondent also attended the hearing.

THE LAW

[6] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

(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.

ISSUE

[7] The issue is as follows:

- Did the General Division err in finding that the Respondent's claim for Employment Insurance benefits beginning on May 25, 2014, could be cancelled pursuant to paragraph 10(6)(*b*) of the *Employment Insurance Act* (Act) and that the Employment Insurance claim could be antedated to January 1, 2015?

SUBMISSIONS

[8] The Appellant submitted the following arguments in support of its appeal:

- The General Division erred in fact and in law when it cancelled, in accordance with paragraph 10(6)(*b*) of the Act, the Respondent's claim for benefits established in May 2014.

- Pursuant to paragraph 10(6)(*b*) of the Act, the Appellant can cancel a portion of the benefit period preceding the first week for which benefits were paid or payable, on two conditions.

- The claim for benefits at issue began on May 25, 2014. The Respondent served her two-week waiting period from May 25 to June 7, 2014, and she received benefits from June 8 to September 20, 2014.

- Given that benefits were paid or were otherwise payable as of the beginning of the claim, no portion of the claim could be cancelled under paragraph 10(6)(*b*) of the Act.

- The Respondent does not meet the criteria in subsection 10(6) of the Act for cancelling her claim for benefits.

[9] The Respondent submitted the following arguments against the Appellant's appeal:

- The General Division did not err either in fact or in law and it properly exercised its jurisdiction.

- She believed that she was entitled to wage-loss replacement benefits for a year, as stipulated in her contract with her insurer. Finally, she was informed that her wage-loss insurance would end on December 31, 2014. It was at this point that she contacted the Appellant.

- The Appellant did not inform her that her claim for benefits could not be cancelled. She was told to file a new claim for benefits, which she did.

- She stated that it was only at the reconsideration that she was informed that her claim for benefits could not be cancelled.

- She stated that she had paid back the entire amount she received as Employment Insurance benefits. She noted that she paid back the entire amount so that her hours could be used towards her new claim.

STANDARDS OF REVIEW

[10] The Appellant maintains that the Appeal Division does not have to defer to the General Division's conclusions regarding questions of law, whether or not the error appears

on the face of the record. However, for questions of mixed fact and law, the General Division must show deference to the General Division. It can intervene only if 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 - *Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

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

[12] 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.

[13] 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.

[14] 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."

[15] 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.)*, FCA 274.

[16] 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

Claim Cancellation

[17] As determined by the General Division, it is impossible to cancel the claim for benefits beginning on May 25, 2014, in accordance with paragraph 10(6)(*a*) of the Act, because evidence shows that the Respondent was paid $18 per week in Employment Insurance benefits from June 8 to August 31, 2014. The Act stipulates that a benefit period cannot be cancelled once it has ended unless no benefits were paid during that period. This is not the case in this situation.

[18] The Tribunal is of the opinion that the issue being appealed in this case concerns the interpretation and application of paragraph 10(6)(*b*) of the Regulations, which states the following:

> Cancellation of Benefit Period
>
> (6) Once a benefit period has been established for a claimant, the Commission may:
>
> (…)
>
> (b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant
>
> (i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and
>
> (ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and end on the day when the request for cancellation was made.
>
> (Emphasis added by the undersigned)

[19] Paragraph 10(6)(*b*) stipulates that it is possible to request that a benefit period be cancelled even if benefits have already been paid. However, this can be done only if a new benefit period beginning in the first week for which benefits were paid or payable is established.

[20] In this case, a benefit period was established for the Respondent on May 25, 2014. The Appellant could therefore "cancel that portion of the benefit period immediately before the first week for which benefits were paid."

[21] The Respondent served her two-week waiting period from May 25 to June 7, 2014, and she received benefits from June 8 to September 20, 2014. Given that benefits were paid or were otherwise payable as of the beginning of the claim, no portion of the claim could be cancelled under paragraph 10(6)(*b*) of the Act.

[22] Despite the Tribunal's sympathy for the Respondent, the General Division could not have granted her request to have her benefit period cancelled without committing an error of law. The Tribunal is bound by the legislation applicable in this case. The fact that the Respondent may have been misled by the Appellant cannot affect the application of the Act. This fact was established in *Granger* A-684-85.

Antedate

[23] Subsection 10(4) of the Act states, in part, that an initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that they qualified to receive benefits.

[24] In this case, the Respondent's qualifying period was established from May 25, 2014, to January 3, 2015, pursuant to paragraph 8(1)(*b*) of the Act because a previous benefit period effective May 24, 2014, had been established for the Respondent (given the refusal to cancel the claim for benefits).

[25] Therefore, the Respondent was not entitled to benefits as of January 4, 2015, because she had accumulated only 15 hours of insurable employment during her qualifying period of

May 24, 2014, to January 3, 2015, whereas section 7 of the Act stipulates that 595 hours would be required.

[26] The Federal Court of Appeal has reiterated that neither the Board of Referees (now the General Division) nor an Umpire (now the Appeal Division) can alter the requirements set out in section 7 of the Act.

CONCLUSION

[27] The appeal is allowed, the decision rendered by the General Division on May 11, 2016, is rescinded, and the appeal of the Respondent before the General Division is dismissed.

Pierre Lafontaine,
Member, Appeal Division