



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. P. v. Canada Employment Insurance Commission*, 2017 SSTADEI 40

Tribunal File Number: AD-16-566

BETWEEN:

P. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: December 13, 2016

DATE OF DECISION: February 6, 2017

DECISION

[1] The appeal is allowed. The matter is returned to the General Division for reconsideration.

INTRODUCTION

[2] Previously, a General Division member dismissed the Appellant's appeal.

[3] In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] A teleconference hearing was held. The Appellant and the Commission each attended and made submissions.

THE LAW

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA), 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

[6] This is a highly complex file containing multiple Commission determinations. Ultimately, however, the appeal before me hinges on a single issue: did the General Division member properly address an argument allegedly raised by the Appellant during the hearing?

[7] The Appellant alleges that the General Division member erred when he found that her appeal should be dismissed. Among other grounds, she alleges that she explained to the member that although she owned 51% of the business in question, she did almost no work for that business, and that therefore any self-employment was only minor in extent. She submits that she was a “placeholder” for her then partner who, as a foreign citizen, could not own the business himself. She does not understand why he did not take this argument into account in rendering his decision.

[8] The Commission supports the decision and asks that I dismiss the appeal. However, they were unable to point me to any evidence in the record that would contradict that Appellant’s submissions.

[9] In his decision, the General Division member correctly stated the law and applied the law to the facts in determining that the Appellant’s self-employment was more than minor in extent. In doing so, the member correctly applied the jurisprudence of the Court and considered the factors he was required to consider. He also determined, based upon these findings, that the Appellant had knowingly made a number of false statements. He then dismissed the appeal.

[10] It cannot be denied that the General Division member’s decision does not mention the Appellant’s alleged argument that it was her then partner, and not her, that was reaping the benefits of the business and that she had little involvement.

[11] It also cannot be denied that if the Appellant is correct and her argument had been made to the General Division as alleged, then the member erred by not considering and addressing that argument. I note that the Appellant explained to the Commission (at GD3-218) why she held a majority interest in the business when this file was at the reconsideration stage.

[12] As observed above, the Commission was unable to point me to any evidence that would contradict the Appellant’s allegations. They did, however, direct me to a self-employment profile (found at GD3-140) filled out by the Appellant. This profile supports the General Division member’s conclusions that the Appellant’s involvement was more than

minor in extent, but appears to have been filled out in 2014. At the hearing before me, the Appellant explained that the profile only applied to a time period subsequent to her receiving benefits and was therefore misleading and not relevant.

[13] Having considered the matter, I find that the Appellant is credible in her uncontested allegation that the General Division member did not properly consider her main argument. This finding is supported by some evidence (such as GD3-218, discussed above), and was not contradicted by any evidence presented by the Commission during the hearing.

[14] Therefore, with great reluctance, I find that the General Division member erred by not basing his decision upon all of the evidence and submissions before him and that I am obligated to intervene to correct this error.

[15] This decision cannot stand.

CONCLUSION

[16] For the above reasons, the appeal is allowed. The matter is returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division