



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *R. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 82

Tribunal File Number: AD-16-502

BETWEEN:

**R. B.**

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: February 21, 2017

DATE OF DECISION: March 2, 2017

## **REASONS AND DECISION**

### **DECISION**

[1] The appeal is allowed and the matter referred back to the Tribunal's General Division (Employment Insurance Section) for a new hearing.

### **INTRODUCTION**

[2] On February 25, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) concluded that the earnings had been allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] On April 4, 2016, the Appellant filed an application for leave to appeal with the Appeal Division after being notified of the General Division's decision on March 5, 2016. Leave to appeal was granted on May 31, 2016.

### **ISSUE**

[4] The Tribunal must decide whether the General Division erred in finding that the earnings had been allocated in accordance with sections 35 and 36 of the Regulations.

### **THE LAW**

[5] Pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the only grounds of appeal are as follows:

- 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] The Appellant is contesting his self-employed status and considers himself a simple investor. However, no reconsideration decision was given by the Respondent on this issue.

[7] However, in his July 12, 2015, request for reconsideration (Exhibit GD3-82), he specifies that his involvement in his son's company was merely an investment, and that the gains should not be allocated the way the Respondent allocated them.

[8] At the hearing before the General Division, the Appellant maintained that his self-employed status had to be argued before the Tribunal. However, because no reconsideration decision on this point had been made by the Respondent, the General Division rightfully declined jurisdiction.

[9] It seems that the Respondent took the Appellant's self-employed status for granted in this case, despite the latter's objection. Because the Respondent had determined that the Appellant operated a business, it applied paragraph 35(10)(c) of the Regulations, which states that income is the amount of the gross income from that employment remaining after deducting the operating expenses, other than capital expenditures, incurred therein.

[10] Given these circumstances, the Respondent does not object to the file being returned to the General Division, if the Tribunal deems it necessary.

[11] For the above-mentioned grounds, the Tribunal is of the opinion that it is appropriate to return the file to the General Division for a new hearing on each issue after a reconsideration decision has been issued by the Respondent with respect to the Appellant's self-employed status.

## **CONCLUSION**

[12] The Tribunal allows the appeal and returns the matter to the General Division (Employment Insurance Section) for a new hearing on each issue after a reconsideration decision has been issued by the Respondent with respect to the Appellant's self-employed status.

[13] The Tribunal orders that the General Division's decision dated February 25, 2016, be removed from the file.

Pierre Lafontaine  
Member, Appeal Division