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

[TRANSLATION]

Citation: *Y. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 122

Tribunal File Numbers: AD-16-772
AD-16-774
AD-16-776

BETWEEN:

Y. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: March 27, 2017

Canada

REASONS AND DECISION

[1] On October 26, 2016, the Appeal Division of the Social Security Tribunal of Canada (Tribunal) granted the Appellant leave to appeal.

[2] The Tribunal requested written submissions from the parties.

[3] The Respondent filed written submissions. On page 3 of its submissions, the Respondent indicates, amongst other things, the following:

> [translation]
> The Commission is of the opinion that the files should be referred back to the Tribunal's General Division (Employment Insurance Section) for a *de novo* hearing.
>
> The Commission agrees with the claimant's [Appellant's] representative; the General Division dismissed the appeal but did not decide on the reconsideration pursuant to subsection 52(5) of the *Employment Insurance Act* (Act).
>
> The Commission did not have to prove that a false statement had knowingly been made; it had simply to believe that a false or misleading statement had been made.
>
> The Appeal Division did not decide on this issue.
>
> Furthermore, the General Division failed to explain whether the claimant's self-employment activities were minor in extent, as stipulated in subsection 30(2) of the *Employment Insurance Regulations*.
>
> [...]
>
> The Commission respectfully requests that the file be referred back to the Tribunal's General Division for a *de novo* hearing.

[4] The Appellant filed written submissions. With regard to the referral of the files back to the General Division, the Appellant stated the following (at page 1 of the submissions dated December 20, 2016):

> [translation]
> The Commission concedes that the General Division member failed to decide on the reconsideration pursuant to subsection 53(5) of the EI Act, and did not properly explain whether the Claimant's self-employment activities were minor in extent, as stipulated in subsection 30(2) of the *Employment Insurance Regulations* (Exhibit AD 2-3). It also submitted evidence that it believes to be relevant to the file's analysis and that it should have included in the initial file (see Exhibit AD 2-3). This agreement covers the conclusions rendered in the following decisions: [...]

ISSUE

[5] The Tribunal must decide whether it should dismiss the appeal, render the decision that the General Division should have rendered, refer the matter back to the General Division, or confirm, rescind, or amend the decision.

ANALYSIS

[6] The hearing before the General Division was held via teleconference on March 22, 2016. The General Division dismissed the Appellant's appeal.

[7] The Appellant appealed to the Appeal Division in June 2016.

[8] The Appeal Division decision of October 26, 2016, states the following at paragraphs 18 to 21:

> [translation]
> [18] Although the General Division had cited subsection 52(2) of the EI Act with regard to a false or misleading statement, it seems that it had failed to analyse the issue.
>
> [19] The General Division cited subsection 30(2) of the EI Regulations (if operating a business is minor in extent...) and it referred to Federal Court of Appeal case law. The General Division assessed the "six criteria" and found that the Applicant had failed to prove that he was unemployed. The Applicant maintains that the analysis was insufficient and was based on several errors in weighing the evidence.
>
> [20] Under these circumstances, the question of whether the General Division based its decision on errors of law or on errors of mixed fact and law should be considered.
>
> [21] The appeal has a reasonable chance of success.

[9] The two parties believe that the General Division did not decide on the reconsideration under subsection 52(5) of the Act and that it failed to explain whether the claimant's self-employment activities were minor in extent, as stipulated in subsection 30(2) of the Regulations.

[10] The Appeal Division's decision granting leave to appeal states the same errors of law or of mixed fact and law.

[11] The parties agree that the files be returned to the General Division.

[12] Therefore, the appeal is allowed. In view of the principle of the right to be heard (*audi alteram partem*) and the presentation of the evidence that will be necessary, it is appropriate to refer the matters back to the Tribunal's General Division.

CONCLUSION

[13] The appeal is allowed, and the files are referred back to the General Division for *de novo* consideration.

Shu-Tai Cheng
Member, Appeal Division