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

Citation: *G. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 111

Tribunal File Number: AD-17-106

BETWEEN:

G. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 20, 2017

Canada

REASONS AND DECISION

DECISION

[1] The appeal is allowed. The case will be returned to the General Division of the Social Security Tribunal (Tribunal) (Employment Insurance Section) for a new hearing by a new member.

INTRODUCTION

[2] On January 10, 2017, the General Division of the Tribunal determined:

- The imposition of a disentitlement pursuant to sections 9 and 11 of the *Employment Insurance Act* (Act) and section 30 of the *Employment Insurance Regulations* (Regulations) for failing to prove she was unemployed was justified.
- The imposition of a penalty pursuant to section 38 of the Act for making a misrepresentation by knowingly providing false or misleading information to the Respondent was justified.

[3] The Appellant requested leave to appeal to the Appeal Division on February 2, 2017. Leave to appeal was granted on February 14, 2017.

ISSUE

[4] The Tribunal must decide whether the General Division erred when it determined that the imposition of a disentitlement pursuant to sections 9 and 11 of the Act and section 30 of the Regulations was justified and that the imposition of a penalty pursuant to section 38 of the Act was also justified.

THE LAW

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* states that the only grounds of appeal are the following:

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.

STANDARD OF REVIEW

[6] The Appellant made no representations to the Tribunal regarding the applicable standard of review.

[7] The Respondent submits that the Appeal Division does not owe any deference to the General Division's conclusions with respect to questions of law, whether or not the error appears on the face of the record. However, for questions of mixed fact and law and questions of fact, the Appeal 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.

[8] The Federal Court of Appeal further indicated:

> 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.

[9] The Court concluded that "[w]he[n] 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."

[10] The mandate of the Appeal Division of the Tribunal as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (A.G.)*, 2015 FCA 274.

[11] 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

[12] The Appellant submits that she was not heard by the General Division. She argues that the General Division gave merely perfunctory consideration, if at all, to issues she brought to its attention. She had the impression that the General Division had already decided the issues prior to the hearing.

[13] The Appellant pleads that natural justice implies that a decision will contain a proper analysis that will lead an objective reader to understand clearly how the decider of fact reached their conclusion. This includes more than a recitation of the Respondent's file material. She submits that unrepresented claimant's submissions must also be given a fair consideration.

[14] The Respondent submits that case law has maintained that it is not sufficient for the General Division to just mention the six criteria set out in subsection 30(3) of the Regulations; it must actually analyze the case in terms of those criteria, and must provide the findings in a clear and coherent manner. In the case in hand, the Respondent respectfully submits that the General Division has erred in fact and law because it did not provide a clear analysis to support the conclusion that the Appellant was not unemployed because her involvement in self-employment was not 'minor in extent.'

[15] Upon review of the General Division's decision with regard to the penalty, the Respondent also submits that the General Division failed to make a clear finding on this issue, namely whether the Appellant subjectively knew that she was making false or misleading representations to the Respondent.

[16] After reviewing the appeal docket and the General Division's decision, the Tribunal agrees with the parties' position and allows the Appellant's appeal.

CONCLUSION

[17] The appeal is allowed. The case will be returned to the General Division of the Tribunal (Employment Insurance Section) for a new hearing by a new member.

[18] The Tribunal orders that the General Division decision dated January 10, 2017, be removed from the file.

Pierre Lafontaine
Member, Appeal Division