



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *V. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 144

Tribunal File Number: AD-16-1060

BETWEEN:

**V. G.**

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: March 23, 2017

DATE OF DECISION: April 5, 2017

## REASONS AND DECISION

### DECISION

[1] This decision applies to the following files: AD-16-1060, AD-16-1061, AD-16-1064, AD-16-1066, AD-16-1067, AD-16-1068, AD-16-1069, AD-16-1075, AD-16-1080, and AD-16-1081. The appeal is allowed and the matter is referred back to the General Division (Employment Insurance Section) for a new hearing.

### INTRODUCTION

[2] On July 25, 2016, the General Division of the Tribunal determined that, after modification, the allocation of earnings had been calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] On August 23, 2016, the Appellant filed an application for leave to appeal to the Appeal Division. Leave to appeal was granted on September 7, 2016.

### ISSUE

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

### THE LAW

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD 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.

## **ANALYSIS**

[6] The Appellant contests her status as a self-employed worker. However, the Respondent had not issued a reconsideration decision on this matter.

[7] On October 20, 2015, an officer of the Respondent asked the Appellant whether she was disputing the fact that the Respondent considered her to be a self-employed worker or disputing only the allocation of her net self-employed earnings. Upon review of her answer, and contrary to the General Division's conclusion, the Tribunal does not believe that the Appellant had understood the distinction made by the Respondent's officer.

[8] At the hearing before the General Division, the Appellant maintained that her status as a self-employed worker should be argued before the Tribunal. However, given that the Respondent had not issued a reconsideration decision on the matter, the General Division had rightly declined jurisdiction.

[9] Despite the Appellant's apparent dispute in this case, it seems that the Respondent had proceeded on the assumption that the Appellant's status was consistent with that of a self-employed worker. As the Respondent determined that the Appellant operated a business, it applied paragraph 35(10)(c) of the Regulations, which establishes income as being "the amount of the gross income from that employment remaining after deducting the operating expenses, other than capital expenditures, incurred therein."

[10] Moreover, the General Division dismissed the Appellant's appeal and imposed amendments; however, it did not explain the amendments in its decision.

[11] For the reasons stated above, the Tribunal is of the opinion that, once the Respondent issues a reconsideration decision on the Appellant's status as a self-employed worker, the matter should be referred back to the General Division for a new hearing on each of the issues under appeal.

## **CONCLUSION**

[12] The Tribunal allows the appeal and, upon the Respondent's issuance of a reconsideration decision on the Appellant's status as a self-employed worker, refers the matter back to the General Division (Employment Insurance Section) for a new hearing on each issue under appeal.

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

Pierre Lafontaine  
Member, Appeal Division