



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v. Canada Employment Insurance Commission*, 2017 SSTA DEI 157

Tribunal File Number: AD-16-1388

BETWEEN:

J. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: April 17, 2017

DECISION

[1] The appeal is dismissed.

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] This appeal was decided on the record.

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 case revolves around natural justice and the right to be heard, as well as the law surrounding insurable hours.

[7] In his application for leave to appeal, the Appellant alleged that he never received notice of his General Division hearing and suggested that perhaps his daughter had received it instead. He also alleged that he had additional insurable hours not taken into account by the Commission or the General Division.

[8] In his decision, the General Division member noted that he proceeded in the absence of the Appellant because he was satisfied that the Appellant had received proper notice. He observed that Canada Post indicated that the Appellant had personally signed for the notice of hearing, and that there was no basis to conclude that the Appellant had more hours of insurable employment than had already been assessed.

[9] To ensure that the natural justice rights of the Appellant were protected, I granted leave to appeal and ordered that the Canada Post signature page be sent to the Appellant so that he could make his case in full possession of the evidence that was before the General Division member.

[10] The Commission, for their part, opposes this appeal and notes that according to s. 90 of the *Employment Insurance Act* the Canada Revenue Agency (CRA) has exclusive jurisdiction over disputes regarding the assessment of the number of insurable hours of employment. They maintain that the General Division member made no error, and ask that the appeal be dismissed.

[11] The Appeal Division has not received any communications from the Appellant since leave to appeal was granted. I have therefore relied upon the arguments he made in the initial application for leave.

[12] Having considered the matter and noting the signature page provided by Canada Post (found at AD1D-2), I find on the balance of probabilities that the Appellant was aware of the hearing. It therefore follows that the General Division member was fully entitled to proceed in the Appellant's absence and that there was no breach of the principles of natural justice. I also find that the Commission is correct in asserting that only the CRA may adjudicate disputes regarding insurable hours.

[13] Regardless, to be sure justice was done I reviewed the General Division decision and found no evidence to support any ground of appeal. In my view, as evidenced by the decision and record, the member conducted a proper hearing, weighed the evidence, made findings of fact that were open to him based upon the evidence, established the correct law, properly

applied that law to the facts, and came to a conclusion that was intelligible and understandable.

[14] There is no reason for the Appeal Division to intervene.

CONCLUSION

[15] For the above reasons, the appeal is dismissed.

Mark Borer

Member, Appeal Division