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

[TRANSLATION]

Citation: *S. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 188

Tribunal File Number: AD-16-1339

BETWEEN:

S. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARING DATE: April 19, 2017

DATE OF DECISION: May 5, 2017

Canada

REASONS AND DECISION

DECISION

[1] The Tribunal allows the appeal and refers the file back to the General Division for a new hearing on each issue.

INTRODUCTION

[2] On November 1, 2016, the Tribunal's General Division found the following:

> - The Respondent could reconsider the Appellant's application for benefits starting on October 24, 2010, under subsection 52(5) of the *Employment Insurance Act* (Act).
>
> - A disentitlement could be imposed on the Appellant pursuant to section 9 and subsections 11(1) and 11(4) of the Act.

[3] On December 1, 2016, the Appellant filed an application for leave to appeal with the Appeal Division after being notified of the General Division's decision on November 14, 2016. Leave to appeal was granted on December 9, 2016.

ISSUE

[4] The Tribunal must decide whether the General Division erred in determining that the Respondent could reconsider the Appellant's claim for benefits starting on October 24, 2010, under subsection 52(5) of the Act and that a disentitlement could be imposed on the Appellant pursuant to section 9 and subsections 11(1) and 11(4) of the Act.

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 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.

STANDARDS OF REVIEW

[6] The parties submit that the Appeal Division must show deference with respect to the General Division's erroneous findings of fact. The Appeal Division can intervene only if these errors were made in a perverse of capricious manner or without regard for the material before it. The Appeal Division does not have to show deference to General Division decisions on questions of natural justice, jurisdiction and law—*Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[7] The Tribunal notes that the Federal Court of Appeal in *Canada (Attorney General) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that "[w]hen it acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court."

[8] The Federal Court of Appeal further indicated that:

> 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 Federal Court of Appeal concludes by emphasizing that "[w]here 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 Tribunal's Appeal Division as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law or 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 strongly contests the Respondent's reliance on subsection 52(5) of the Act. She submits that the Respondent did not meet its burden of proof, which according to Federal Court of Appeal jurisprudence is not insignificant. She argues that the General Division erred in finding that the Respondent could reasonably consider that a false or misleading statement was made in connection with her claim for benefits.

[13] The Appellant submitted before the General Division that the Respondent had launched an investigation following a disclosure of information, but that it had provided no details to the Appellant. It was therefore impossible for her to defend herself because she did not know what she had been accused of by said disclosure of information. According to the Appellant, by that very fact, there is insufficient evidence to conclude that the Respondent could reasonably find that there had been a false or misleading statement.

[14] The Respondent, which did not appear before the General Division, submits on appeal that there had not been a disclosure of information and that this information appears erroneously in the Respondent's submissions before the General Division.

[15] The General Division's role is to consider the evidence that both parties have presented to it, to determine the facts relevant to the particular legal issue before it and to articulate, in its written decision, its own independent decision with respect thereto.

[16] The General Division must clearly justify the conclusions it renders. When faced with contradictory evidence, it cannot disregard it; it must consider it. If it decides that the evidence should be dismissed or assigned little or no weight at all, it must explain the reasons for the decision, failing which there is a risk that its decision will be marred by an error of law or be qualified as capricious—*Bellefleur v. Canada (Attorney General)*, 2008 FCA 13.

[17] In this case, the General Division overlooked the evidence submitted by the Appellant. She attempted to show the General Division that she had been the subject of a disclosure of information of which she did not know the content, and that it was therefore impossible for the Respondent to find that there had been a false or misleading statement. The General Division must consider the Appellant's evidence and explain the reasons why it was dismissed.

[18] Furthermore, the General Division faulted the Appellant for not making any submissions on the issue of her availability from March 27 to August 31, 2011. However, the General Division did not hear the Appellant on this point and did not ask the Appellant's representative any questions to clarify a clear misunderstanding—a misunderstanding that most likely resulted from a submission of the Appellant with respect to the duration of sickness benefits under the Act.

[19] The concept of "natural justice" includes a claimant's right to a fair hearing. So fundamentally important is this right that there must not exist even the appearance of prejudice to the right of any claimant to make a full presentation before an unbiased General Division. The law requires that justice must not only be done, but also manifestly and undoubtedly seen to be done. The mere suspicion that a claimant has been denied this right is justification in itself for an order returning the matter to the General Division.

[20] A fair hearing presupposes adequate notice of the hearing, the opportunity to be heard, the right to know what is alleged against a party and the opportunity to answer those allegations. The Appellant was obviously unable to show that she was available before the General Division rendered its decision. She was clearly denied her right to a fair hearing.

[21] Under the circumstances, the Respondent does not object to the file being referred back to the General Division.

[22] For the above-mentioned reasons, the appeal will be allowed and the file will be returned to the General Division for a new hearing on each issue.

CONCLUSION

[23] The Tribunal allows the appeal and returns the file to the General Division for a new hearing on each issue.

Pierre Lafontaine
Member, Appeal Division