



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *C. P. v. Canada Employment Insurance Commission*, 2017 SSTADEI 239

Tribunal File Number: AD-16-1383

BETWEEN:

C. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: June 8, 2017

DATE OF DECISION: June 16, 2017

REASONS AND DECISION

DECISION

[1] The Tribunal allows the appeal and refers the matter back to the General Division (Employment Insurance Section) for a new hearing by a different member only on the issue relating to the allocation of earnings.

INTRODUCTION

[2] On November 14, 2016, the General Division determined that:

- Subsequent to the changes, the earnings had been allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).
- The penalty imposed under subsection 41.1(2) of the *Employment Insurance Act* (Act) for committing an act or omission by making a representation that he knew was false or misleading was valid.

[3] On December 15, 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 15, 2016. Leave to appeal was granted on December 22, 2016.

ISSUE

[3] The Tribunal must decide whether the General Division erred when it concluded that, subsequent to the changes, the allocation of earnings had been conducted in accordance with sections 35 and 36 of the Regulations and that a penalty should be imposed pursuant to subsection 41.1(2) of the Act.

THE LAW

[4] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

- 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

[5] The Appellant did not make any submissions regarding the applicable standard of review.

[6] The Respondent submits that the appropriate standard of review for questions of law is correctness, and that the appropriate standard of review for questions of mixed fact and law is reasonableness—*Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[7] The Tribunal notes that the Federal Court of Appeal in the case of *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, based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal. The parties made no submissions regarding the appropriate standard of review.

ANALYSIS

[12] The Appellant submits that the General Division did not provide an opportunity for him to present his Revenu Québec file, which could have helped him prove his case. He argues that the General Division's decision was rendered without consideration of the documents he had sought from Revenu Québec. He claims that the documents in question demonstrate that the Respondent's calculations were incorrect.

[13] The Respondent submits that the General Division had waited two months before rendering a decision and that the clerk had tried to reach the Appellant without success. It argues that if the Appeal Division finds that the documents could not be submitted on time due to circumstances beyond the Appellant's control, it does not object to the file being returned to the General Division for a new hearing.

[14] It is true that the General Division waited two months before rendering its decision on November 14, 2016. However, the Appellant had not yet received the documents he had requested from Revenu Québec. The situation was clearly out of his control. The Appellant submits that he had not yet received the requested documents when the General Division rendered its decision, and the Tribunal finds no reason to doubt his credibility.

[15] 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 clearly did not have an opportunity to respond fully to the Respondent's allegations.

[16] Furthermore, the Tribunal finds that the General Division exceeded its jurisdiction in making a decision with regard to the penalty issue because, by the General Division's own admission, the Respondent had not rendered a reconsideration decision on this issue, under section 112 of the Act.

CONCLUSION

[17] The Tribunal allows the appeal and refers the matter back to the General Division (Employment Insurance Section) for a new hearing by a different member only on the issue relating to the allocation of earnings.

[18] The Tribunal orders that the General Division's decision dated November 14, 2016, be removed from the file.

Pierre Lafontaine

Member, Appeal Division