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

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. C. G.*, 2017 SSTADEI 244

Tribunal File Number: AD-17-37

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

C. G.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: June 8, 2017

DATE OF DECISION: June 22, 2017

Canada

REASONS AND DECISION

DECISION

[1] The appeal is allowed and the matter is referred back to the General Division for a new hearing on each issue.

INTRODUCTION

[2] On December 16, 2016, the Tribunal's General Division determined that the Appellant was in reconsidering the benefit claim pursuant to subsection 52(5) of the *Employment Insurance Act* (Act).

[3] The Applicant filed an application for leave to appeal to the Appeal Division on January 17, 2017, after having been notified of the General Division's decision on December 19, 2016. Leave to appeal was granted on January 23, 2017.

FORM OF HEARING

[4] The Tribunal determined that the hearing of this appeal would proceed by teleconference for the following reasons:

- The complexity of the issue or issues;
- The fact that the credibility of the parties was not a prevailing issue;
- The information in the file, including the nature of gaps or need for clarification in the information;
- the need to proceed as informally and as quickly as possible while complying with the rules of natural justice.

[5] At the hearing, the Appellant was present and Louise Laviolette represented the Respondent. The Respondent also attended the hearing.

THE LAW

[6] 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.

ISSUES

[7] The Tribunal must decide whether the General Division erred in concluding that the Appellant was not justified in reconsidering the benefit claim pursuant to subsection 52(5) of the Act.

SUBMISSIONS

[8] The Appellant submits the following arguments in support of its appeal:

- the General Division erred in law in making its decision. Based on subsection 52(5) of the Act, the Appellant does not have to establish that the Claimant knowingly made false or misleading statements, but rather has to show that it could believe that a false or misleading statement had been made in connection with a benefit claim.

- The Respondent neglected to provide information on the income generated by his business. Since the Appellant had made false or misleading statements, it had 72 months to reconsider the Respondent's benefit claim.

- The Respondent received benefits from October 9, 2011, to April 21, 2012, and was advised of the reconsideration of his claim on February 17, 2016, which is well within the timeframe prescribed by subsection 52(5) of the Act.

- The General Division erred when it imposed an excessively heavy burden on the Appellant and ignored insights from the Federal Court of Appeal on the issue.

[9] The Respondent submits the following reasons against the Appellant's appeal:

- After reviewing the evidence, the General Division determined that the Appellant had on hand all the pertinent explanations and facts to make a decision by 2013, well within the 36-month timeframe provided for in subsection 52(1) of the Act, and that, on the basis of these facts and explanations, the Appellant had decided in 2013 that the Respondent could be considered "unemployed" and that he was therefore was entitled to benefits under the Act.

- The Appellant showed itself to be satisfied by all the responses that the Respondent had provided in his reply to its information requests in 2013, and there was no new fact since 2013 that could have indicated that the Respondent had made false or misleading statements; in other words, the Respondent provided to the Appellant in 2013 all the information necessary for justifying his benefit claims, and the latter decided that the Respondent was entitled to them.

- When the Appellant changed its mind in 2016, it was not on the basis that the Respondent had made false or misleading statements, because it had had until 2013 all of the facts on hand to make a decision in the docket that, on the facts, the decision made by the Appellant in 2013 was favourable to the Respondent.

- The Appellant is seeking to use subsection 52(5) of the Act to change the 2013 decision after the 36-month timeline provided for in the Act.

STANDARDS OF REVIEW

[10] The Appellant maintains that the Appeal Division does not have to defer to the General Division's conclusions regarding questions of law, regardless of whether the error appears on the face of the record. However, for questions of mixed fact and law, as well as for 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 had made in a perverse or capricious manner or without regard for the material before it—*Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[11] The Respondent did not make any submissions regarding the applicable standard of review.

[12] 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."

[13] 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.

[14] The Federal Court of Appeal concluded by emphasizing that "Where 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."

[15] 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.

[16] 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 or its decision was unreasonable, the Tribunal must dismiss the appeal.

ANALYSIS

[17] The General Division determined that the Appellant was not justified in having reconsidered the Respondent's benefit claim under subsection 52(5) of the Act (claim that had begun on November 3, 2011).

[18] The Federal Court of Appeal determined in *Langelier* (A-140-01), *LeMay* (A-172-01) and *Dussault* (A-646-02) that, to be granted the extended time to reconsider set out in subsection 52(5) of the Act, the Appellant does not have to establish that the claimant in question made false or misleading statements but must instead **simply show that it could reasonably find that a false or misleading statement had been made** in connection with a benefit claim.

[19] The General Division determined that for the Appellant to be able to extend the reconsideration period from 36 to 72 months, there had to be "bad faith" by false or misleading statements made knowingly by a claimant.

[20] The Tribunal is of the opinion that the General Division committed an error in law on the issue of the reconsideration of the Respondent's benefit claim.

[21] At the reconsideration stage, the Appellant did not have to show that the Respondent had knowingly made a false or misleading statement. Rather, the Appellant had to show that it could reasonably believe that a false or misleading statement had been made.

[22] Furthermore, the General Division introduced in error the notion of "bad faith" in its assessment of the evidence in order to determine whether the Appellant was able to proceed with a reconsideration of the Respondent's benefit claim under subsection 52(5) of the Act.

[23] For the abovementioned reasons, it is appropriate to return the file to the General Division for a new hearing on each issue.

CONCLUSION

[24] The appeal is allowed, and the matter is referred back to the General Division for a new hearing on each issue.

[25] The Tribunal orders that the General Division's decision dated December 16, 2016, be removed from the file.

Pierre Lafontaine

Member, Appeal Division