



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *S. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 246

Tribunal File Number: AD-16-1360

BETWEEN:

**S. C.**

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

HEAD ON: June 6, 2017

DATE OF DECISION: June 26, 2017

## **REASONS AND DECISION**

### **DECISION**

[1] The Social Security Tribunal of Canada (Tribunal) allows the appeal and returns the file to the General Division so that a decision can be made on the issue of the undeclared earnings, the penalty and the notice of violation.

### **INTRODUCTION**

[2] On November 12, 2016, the Tribunal's General Division found that the Respondent had properly exercised its discretion when it refused to grant an extension of time to apply for reconsideration of the decision of September 25, 2014, under section 112 of the *Employment Insurance Act* (Act).

[3] On December 9, 2016, the Appellant filed an application for leave to appeal with the Appeal Division. Leave to appeal was granted on December 20, 2016.

### **FORM OF HEARING**

[4] The Tribunal decided 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 parties' credibility was not a key issue;
- the cost-effectiveness and expediency of the hearing choice;
- the need to proceed as informally and as quickly as possible while complying with the rules of natural justice.

[5] The Appellant attended the hearing. The Respondent did not attend despite having received the notice to appear.

## **THE LAW**

[6] According 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.

## **ISSUE**

[7] The Tribunal must decide whether the General Division erred when it concluded that the Respondent had properly exercised its discretion when it refused to grant an extension of time to apply for reconsideration of the decision of September 25, 2014, under section 112 of the Act.

## **SUBMISSIONS**

[8] The Appellant submits the following reasons in support of his appeal:

- 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.
- It is wrong to claim that he never had a continuing intention to request reconsideration of the September 25, 2014, decision.
- He disputed the Respondent's decision as of October 27, 2014, as indicated in the Tribunal's file.

- He never received a decision after he submitted his reconsideration request in October 2014.

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

- Based on the evidence in the file and the Appellant's testimony, he was notified of the Respondent's decision on September 25, 2014.
- A claimant, like the Appellant, who is aware of the Respondent's decision informing him that earnings were unreported, but who chooses not to submit a reconsideration request in a timely manner or not follow up with concrete actions to ensure that it is not an error, cannot succeed in demonstrating that the delay in submitting his application is justified or that there is an acceptable reason or motive for requesting an extension of time under the Act.
- Even if it was demonstrated that the Appellant had taken steps in May 2015, he was still outside the time limit at that time.
- The issue that the Tribunal had to decide was whether the Respondent had properly exercised its discretion when it refused, on February 25, 2016, to grant an extension of time to apply for reconsideration of its decision of September 25, 2014.
- The General Division rendered a decision within its jurisdiction and the Respondent is of the opinion that the Tribunal's decision is clearly reasonable in light of the relevant evidence.
- The role of the Tribunal's Appeal Division is limited to deciding whether the General Division's interpretation of the facts was reasonably consistent with the evidence in the file.
- Case law holds that the special reasons justifying the late filing of an appeal include humanitarian reasons or circumstances over which the claimant has no control. However, ignorance of the appeal process, forgetfulness or simple negligence do not constitute special reasons.

## STANDARDS OF REVIEW

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

[11] 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.

[12] 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.”

[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 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.”

[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] 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.

## ANALYSIS

[17] On February 25, 2016, the Respondent refused the Appellant's request for an extension of the 30-day period to submit a reconsideration request under section 112 of the Act and section 1 of the *Regulations on Reconsideration Requests*.

[18] The Appellant filed his appeal of the Respondent's March 17, 2016, decision before the General Division within the legally established timeframe.

[19] The Act gives the Respondent the discretionary power to extend the time within which a reconsideration decision may be requested.

[20] In the present matter, the General Division concluded that the Appellant did not have a reasonable explanation to support his request for a deadline extension, nor did he demonstrate a continuing intention to request reconsideration to justify the delay. The General Division determined that the case had no reasonable chance of success and that it had not been demonstrated that there would be no prejudice to any party.

[21] The Tribunal is of the view that the General Division erred in assessing whether the Respondent properly exercised its discretionary power, since the Appellant filed his reconsideration request within the 30-day period following the date on which he was notified of the Respondent's September 25, 2014, decision, in accordance with subsection 112(1) of the Act.

[22] Indeed, on October 23, 2014, within the 30-day time limit, the Respondent received two letters from the Appellant—one explaining that his identity had been stolen (pages GD3-14 to GD3-15) and another explaining that he had communicated with an agent in order to end his Employment Insurance (pages GD3-16 to GD3-18).

[23] Moreover, the General Division acknowledged the Appellant's response to the Respondent's September 25, 2014, decision, but unfortunately ignored it because it did not explicitly contain a formal request for reconsideration. The Tribunal is of the view that the General Division erred in showing such stringency and that it should have recognized that it was in fact a dispute of the Respondent's initial decision.

[24] Moreover, the Respondent contacted the Appellant on February 19, 2015, to proceed with the request for reconsideration, in accordance with the "Comments" section of his interview, but he said he was busy and asked to be contacted the following week (GD3-19). On February 25 and 26, 2015, the Respondent made two attempts to reach the Appellant by telephone, but was unsuccessful. It is therefore noted in the February 27, 2015, interview that a reconsideration decision would be made based on the facts in the file (GD3-20). However, the Appellant never received a reconsideration decision from the Respondent.

[25] It is true that the Respondent then invited the Appellant to file a request for reconsideration, but the Tribunal finds that this request had already been completed by the Appellant and processed by the Respondent. The Respondent's subsequent requests in this regard only added to the confusion around the file.

[26] Since the Tribunal finds that the Appellant had filed his request for reconsideration of the Respondent's initial decision within the legal time frame and it was refused by the Respondent, and given that the Appellant never received the reconsideration decision, it is appropriate, in the interests of justice, that the file be returned to the General Division so that it can render a decision on the undeclared earnings, the penalty and the notice of violation.

## **CONCLUSION**

[27] The Tribunal allows the appeal and returns the file to the General Division so that a decision can be rendered on the issue of the undeclared earnings, the penalty and the notice of violation.

Pierre Lafontaine

Member, Appeal Division