



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. J. M.*, 2017 SSTADEI 269

Tribunal File Number: AD-17-87

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

J. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: July 4, 2017

DATE OF DECISION: July 13, 2017

REASONS AND DECISION

DECISION

[1] The appeal is allowed and the file is returned to the General Division for a new hearing on all issues.

INTRODUCTION

[2] On January 16, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that, as the Respondent had not knowingly made a misrepresentation, a penalty was not to be imposed and that there was no justification for the issuance of a notice of violation.

[3] The Appellant requested leave to appeal to the Appeal Division on February 1, 2017. Leave to appeal was granted on February 13, 2017.

TYPE OF HEARING

[4] The Tribunal held a teleconference hearing for the following reasons:

- the complexity of the issue under appeal
- the parties' credibility is not anticipated to be a prevailing issue
- the information in the file, including the need for additional information
- the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness, and natural justice permit

[5] At the hearing, Carol Robillard represented the Appellant. The Respondent also attended the hearing.

APPLICABLE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* states that 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.

ISSUES

[7] The Tribunal must decide whether the General Division erred when it determined that a penalty was not warranted and that there was no justification for the issuance of a notice of violation.

STANDARD OF REVIEW

[8] The Appellant submits that the Appeal Division does not owe any deference to the General Division's conclusions with respect to 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.

[9] The Respondent made no representations regarding the applicable standard of review.

[10] 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 when the Appeal Division “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.”

[11] The Federal Court of Appeal further indicates that:

[n]ot 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.

[12] The Federal Court of Appeal concludes that when the Appeal Division “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.”

[13] The mandate of the Appeal Division of the Social Security Tribunal as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[14] In accordance with the above instructions, 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

[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 that it will be qualified as capricious—*Oberde Bellefleur OP Clinique dentaire O. Bellefleur (Employer) v. Canada (Attorney General)*, 2008 FCA 13.

[17] In this case, the General Division did not explain why it disregarded the evidence that the Appellant had submitted, more particularly, the Respondent's admission that he knew his reports were incorrect and that he was making a false statement (GD3-92, GD3-93). This constitutes an error of law.

[18] Furthermore, the General Division also erred in law when, in order to decide whether the Respondent subjectively knew that he was making false or misleading statements, it introduced the notion of fraud and intent to deceive. The absence of fraud or intent to deceive on the part of the Respondent is irrelevant—*Canada (Attorney General) c. Bellil*, 2017 FCA 104.

[19] In view of this conclusion, the General Division's decision on the issue of the notice of violation cannot stand.

[20] For all the above-mentioned reasons, the file will be returned to the General Division for a new hearing on all issues.

CONCLUSION

[21] The appeal is allowed and the file is returned to the General Division for a new hearing on all issues.

[22] The Tribunal orders that the General Division decision dated January 16, 2017, be removed from the file.

Pierre Lafontaine
Member, Appeal Division