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

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. P. B.*, 2017 SSTADEI 264

Tribunal File Number: AD-17-134

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

P. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: July 6, 2017

DATE OF DECISION: July 11, 2017

Canada

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On January 25, 2017, the Tribunal's General Division found that an indefinite disqualification had no basis in accordance with sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] On February 10, 2017, the Appellant filed an application for leave to appeal before the Appeal Division. Leave to appeal was granted on February 16, 2017.

ISSUE

[4] The Tribunal must determine whether the General Division overstepped its jurisdiction in rendering a decision on voluntary leaving when the issue was the Respondent's availability.

THE LAW

[5] 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.

STANDARDS OF REVIEW

[6] 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.

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

[8] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (Attorney General) v. Jean*, 2015 FCA 242, specifies 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."

[9] 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.

[10] The Court concluded that "[w]he[n] 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."

[11] 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.

[12] As a result, unless the General Division failed to observe a principle of natural justice, committed an error 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

[13] The Appellant argues that, since the decision was rendered on sections 112(1) and 113 of the Act, which pertained strictly to the Respondent's availability, the General Division did not have the jurisdiction to render a decision on voluntary leaving. By adjudicating on an issue that was not before it and for which the Appellant has never rendered a decision, the General Division overstepped its jurisdiction.

[14] The Appellant argues that all the evidence shows that the Respondent took leave to attend to his family. The Appellant argues that no disqualification had been imposed on the Respondent under sections 29 and 30 of the EA Act because it was actually based on taking such leave. Rather, it found that the Respondent was not eligible to receive benefits, pursuant to section 18 of the EA Act, since he had been unable to prove his disability during the period in question.

[15] The Respondent argues that he had obtained leave from his employer in order to attend to his family. He was on a work stoppage due to a doctor's note and he remained employed by his employer despite his leave. He argues that he is eligible for sickness or compassionate care benefits.

[16] For the Tribunal, it is apparent that the General Division overstepped its jurisdiction by adjudicating on the issue of voluntary leaving. The decision stemming from the Appellant's reconsideration on March 3, 2016, pertains strictly to the Respondent's availability.

[17] Section 113 of the Act clearly provides that an appeal to the General Division can be made only if the Appellant has rendered a reconsideration decision in compliance with section 112 of the Act.

[18] For the above-mentioned reasons, the Tribunal is of the opinion that it is appropriate to allow the appeal and to refer the matter to the General Division for a new hearing on the issue of availability.

CONCLUSION

[19] The appeal is allowed, and the matter is referred to the General Division for a new hearing on the issue of availability.

Pierre Lafontaine

Member, Appeal Division