



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. M. S.*, 2017 SSTADEI 270

Tribunal File Number: AD-16-1114

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

M. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: June 22, 2017

DATE OF DECISION: July 14, 2017

DECISION

[1] The appeal is allowed. The matter is returned to the General Division for reconsideration.

INTRODUCTION

[2] Previously, a General Division member allowed the Respondent's appeal.

[3] In due course, the Commission filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] A teleconference hearing was held. The Commission and the Respondent each attended and made submissions. An interpreter was also present.

THE LAW

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act* (the DESDA), the only grounds of appeal are that:

(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.

ANALYSIS

[6] This file involves the Respondent's self-employment, specifically whether or not the Respondent's self-employment was minor in extent within the meaning of ss. 30(2) of the *Employment Insurance Regulations* (Regulations), and also whether or not the Respondent knowingly made a false statement to the Commission regarding that self-employment.

[7] The Commission argues that the General Division member did not properly apply the law in determining that the Respondent's self-employment was minor in extent because, as evidenced by his decision, the member did not consider all six of the factors set out in ss. 30(3) of the Regulations. The Commission also submits that the General Division seems to have overlooked certain pieces of evidence, such as a

“Self-Employment Questionnaire” (found at GD3-19). They ask that their appeal be allowed and that a new General Division hearing be ordered.

[8] The Respondent submits that his self-employment was indeed minor in extent, and that the General Division decision does not reflect the entirety of the conversation between himself and the member. Further, he notes that he fully explained to the member the reasons why the Self-Employment Questionnaire had limited relevance.

[9] In his decision, the General Division member stated the law correctly. He then summarized some of the evidence and the parties' submissions and found that the Appellant “was only involved to a minor extent” in the business. The member then went on to find that the Respondent did not make a false statement, because he was not self-employed, and allowed the appeal in its entirety.

[10] These findings are problematic for several reasons.

[11] First, it is unclear to me on what basis the member concluded that the warning for making a false statement should be rescinded because the Respondent was not self-employed.

[12] Even with the Respondent's submissions accepted in full, it is clear that the Respondent had engaged in self-employment of some kind. There is absolutely no evidence to the contrary: even if the Respondent's self-employment was only minor in extent and he was therefore entitled to benefits (as found by the member in the previous paragraph of his decision), the Respondent was still self-employed. If only for this reason, the above finding cannot stand.

[13] Second, I note that the General Division member performed no substantive analysis regarding the six factors that he had earlier correctly identified. In fact, the entirety of his discussion on this is contained in one paragraph (paragraph 35 of his decision) that does not properly consider all the required factors or explain why he preferred the Respondent's evidence over that of the Commission.

[14] To be clear, it was entirely open to the General Division member to find, after a full analysis of the submissions and evidence before him, that the Respondent was self-employed only to a minor extent. It was also entirely open to him to find that the warning for making a false statement should be rescinded.

[15] But in doing so, reasons and a full explanation of how these conclusions were reached must be given. These reasons need not be lengthy, but they must allow for a meaningful review of the decision being made. The member's failure to do so in the decision under appeal is both an error of law and a breach of the parties' natural justice rights, each of which I am obligated to intervene to correct.

[16] I wish to stress that in allowing this appeal I make no findings on the merits of the case and that I fully accept that the errors identified above were in no way the Respondent's fault.

[17] It is because of this that I am returning the file for a new hearing at the General Division. The parties will have the opportunity to make their respective cases in full so that justice can be done between them.

CONCLUSION

[18] For the above reasons, the appeal is allowed. The matter is returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division