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

Citation: *J. L. v. Canada Employment Insurance Commission,* 2017 SSTADEI 277

Tribunal File Number: AD-17-310

BETWEEN:

J. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Mark Borer

HEARD ON:

DATE OF DECISION: July 19, 2017

Canada

DECISION

[1] On consent, the appeal is allowed. The matter will be returned to the General Division for reconsideration.

INTRODUCTION

[2] Previously, a member of the General Division dismissed the Appellant's appeal. In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[3] This appeal was decided on the record.

THE LAW

[4] According to subsection 58(1) of the *Department of Employment and Social Development Act*, 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

[5] This appeal concerns whether or not certain moneys constituted earnings which needed to be allocated.

[6] The Appellant argues, among other things, that the General Division member failed to consider her argument that the moneys in question were damages rather than earnings. She asks that her appeal be allowed.

[7] The Commission, having considered the file and the decision, now admits that the member erred as the Appellant has alleged. They agree that a new hearing must be ordered so that the Appellant's arguments can be addressed by a General Division member as required. They further note that the General Division member's decision was capricious in its conclusions, and not transparent.

[8] Having considered the file, I find myself in agreement with the parties that the General Division member erred as alleged by not considering the Appellant's submissions. The member should have addressed the Appellant's argument directly and looked behind the settlement agreement instead of determining (at paragraph 24 of his decision) that "only the minutes of settlement are of any relevance or probative value to the issue."

[9] As noted by the Federal Court of Appeal in *Meechan v. Canada (Attorney General)*, 2003 FCA 368 (among other cases), the fact that the parties have attached a particular label to a given payment as part of a settlement agreement is not conclusive.

[10] To be clear, it was (and is) entirely open to the member to find, after an examination of the evidence and submissions, that the moneys that the Appellant received were earnings that need to be allocated. But the Appellant's arguments and evidence must be fully considered in coming to that conclusion, instead of solely relying upon the language used in a settlement agreement.

[11] I agree that a new hearing is required so that the parties can make their respective cases in full.

CONCLUSION

[12] For the above reasons and on consent, the appeal is allowed. The matter will be returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division