



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 369

Tribunal File Number: AD-17-449

BETWEEN:

**D. G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

DECISION BY:: Pierre Lafontaine

DATE OF DECISION: October 24, 2017

## **REASONS AND DECISION**

### **DECISION**

[1] The appeal is allowed and the file is returned to the General Division of the Social Security Tribunal of Canada (Tribunal) for a new hearing.

### **INTRODUCTION**

[2] On April 17, 2017, the General Division determined that the allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] The Appellant requested leave to appeal to the Appeal Division on June 13, 2017, after having received the General Division decision on April 27, 2017. The Appellant was allowed an extension of time to file his application for leave to appeal and leave to appeal was granted on September 19, 2017..

### **ISSUE**

[4] The Tribunal must decide whether the General Division erred when it determined that the allocation of earnings was calculated in accordance with sections 35 and 36 of the Regulations.

### **THE LAW**

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD 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.

## **ANALYSIS**

[6] The General Division found that the evidence demonstrated that the Appellant received monies as a result of his layoff or separation from employment. It found that the amounts received were to be considered earnings pursuant to subsection 35(2) of the Regulations because they were sums arising from employment and that the amounts had to be allocated pursuant to subsection 36(9) of the Regulations, starting with the week of the end of employment that had led to the payment.

[7] The Appeal Division granted leave to appeal because the employer did not explain the discrepancies in the Record of Employment and did not confirm the gross amount of severance and vacation pay, or whether the vacation pay was paid on each cheque, on separation, or on an anniversary date and, if so, the date of the anniversary (GD3-29).

[8] The Appellant submits in appeal that the data provided by the Respondent before the General Division is inaccurate, as he claims that he had never received the total amount of \$1,326.52, which allegedly represents a severance and vacation pay. He argues that the information shown in exhibit GD3-35 does not represent the amount he had received.

[9] The Respondent submits in appeal that the General Division based its decision on an erroneous finding without having regard to all the material before it. In support of its position, the Respondent refers to the discrepancy in the document at GD3-29, which contradicts the amount of vacation pay as reported on the Record of Employment (GD3- 20). This evidence was before the General Division and there is no reference in the analysis as to how the member reconciled the discrepancy. Case law has established that when the General Division dismisses an element of evidence without first giving reasons, it commits an error of law.

[10] The Respondent submits that the Appellant has grounds for appeal under subsection 58(1) of the DESD Act and therefore requests that the Appeal Division, pursuant to subsection 59(1) of the DESD Act, return the case to the General Division for a redetermination.

[11] For the above-mentioned reasons, the Tribunal allows the Appellant's appeal.

## **CONCLUSION**

[12] The appeal is granted and the file returned to the General Division for a new hearing.

[13] The General Division's decision dated April 17, 2017, is to be removed from the file.

[14] The Tribunal instructs the Respondent to contact the employer prior to the new hearing before the General Division to obtain precisions as to the discrepancies in the Record of Employment and to confirm the gross amount of severance and vacation pay, or whether the vacation pay was paid on each cheque, on separation, or on an anniversary date and, if so, the date of the anniversary.

Pierre Lafontaine

Member, Appeal Division