



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *G. L. v Canada Employment Insurance Commission*, 2019 SST 155

Tribunal File Number: AD-18-865

BETWEEN:

G. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 21, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal.

OVERVIEW

[2] The Appellant, G. L. (Claimant), made an initial claim for benefits on November 11, 2012. On November 6, 2017, the Commission informed the Claimant that it had adjusted his earnings because he had not declared the earnings he received from the municipality of X during his benefit period. The Commission upheld its decision on reconsideration. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the amounts that the Claimant received from the municipality constituted earnings that must be allocated under section 36(4) of the *Employment Insurance Regulations* (EI Regulations).

[4] The Tribunal granted leave to appeal. The Claimant argues that he was a city councillor only from November 3, 2013, to March 1, 2018. He submits that the General Division erred because he was in this position for just four years and three months, rather than eight years.

[5] The Tribunal allows the Claimant's appeal.

ISSUE

[6] Did the General Division base 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

Appeal Division's Mandate

[7] The Federal Court of Appeal has established that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESDA).¹

[8] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or 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, the Tribunal must dismiss the appeal.

Issue: Did the General Division base 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?

[10] The salary paid to an elected representative for services rendered constitutes earnings under section 35 of the EI Regulations.

[11] Because this matter deals with earnings, these amounts must be allocated to the period in which the services were performed, in accordance with section 36(4) of the EI Regulations.

[12] However, the Claimant argues that the earnings for the period of November 11, 2012, to August 10, 2013, should not be allocated because he started as a city councillor only on November 3, 2013.

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[13] The Commission submits that you cannot apply earnings before the Claimant's first day of work. The Commission therefore wishes to concede the appeal so that the earnings are cancelled.

[14] The Tribunal is of the view that the General Division did not consider the evidence before it that the Claimant did not take office until November 3, 2013, and that he received no earnings from the municipality before that date.

[15] Given the arguments in support of the Claimant's appeal, considering the Respondent's position on appeal, and after reviewing the file, the Tribunal agrees that the appeal should be allowed.

CONCLUSION

[16] The Tribunal grants the appeal for the reasons mentioned above.

Pierre Lafontaine

Member, Appeal Division

METHOD OF PROCEEDING:	On the record
-----------------------	---------------