



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. L. v Canada Employment Insurance Commission*, 2019 SST 971

Tribunal File Number: AD-19-465

BETWEEN:

A. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 9, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal in files AD-19-464, AD-19-466, and AD-19-467. The Claimant's withdrawal in file AD-19-465 is acknowledged.

OVERVIEW

[2] The Appellant, A. L. (Claimant), reported that he had completed several periods of employment in the construction industry from 2008 to 2013 inclusive. As a result, four (4) benefit periods were established, and he received Employment Insurance benefits.

[3] The Commission gave decisions to the effect that the Claimant's four claims were cancelled because the Canada Revenue Agency (CRA) had determined that he had not held insurable employment in relation to each of those claims. The Claimant requested a reconsideration, but the Commission upheld the decisions. The Claimant appealed to the Tribunal's General Division.

[4] The General Division found that, in reading the decisions given by the CRA indicating that the Claimant had not held insurable employment for construction companies, the Commission could reasonably find that false or misleading statements had been made. The Commission therefore was justified in taking advantage of the 72-month period set out in section 52 of the *Employment Insurance Act* (EI Act) to reconsider his claims.

[5] The Claimant was granted leave to appeal. He argues that the General Division erred in law in making its decision, mainly that it erred in its interpretation of section 52(5) of the EI Act.

[6] The Tribunal must decide whether the General Division erred in its interpretation of section 52(5) of the EI Act.

[7] The Tribunal allows the Claimant's appeal in files AD-19-464, AD-19-466, and AD-19-467. The Claimant's withdrawal in file AD-19-465 is acknowledged.

ISSUE

[8] Did the General Division err in its interpretation of section 52(5) of the EI Act?

ANALYSIS

Appeal Division's Mandate

[9] 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* (DESD Act).¹

[10] 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.

[11] 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.

PRELIMINARY REMARKS

[12] This decision concerns files AD-19-464, AD-19-465, AD-19-466, and AD-19-467.

[13] The Claimant withdraws his appeal in file AD-19-465.²

[14] The Tribunal accepts the withdrawal presented in accordance with section 14(1) of the *Social Security Tribunal Regulations*.

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

² AD3-3.

Issue: Did the General Division err in its interpretation of section 52(5) of the EI Act?

[15] The Claimant argues that the General Division erred because the mere fact that the CRA decided, after the benefit periods, that the Claimant's employment was not insurable was insufficient for the Commission to take advantage of the 72-month period set out in section 52(5) of the EI Act. Furthermore, he argues that the General Division could not acknowledge his work performance and his earnings and then find that the Commission was justified in taking advantage of section 52(5) of the EI Act.

[16] The Commission would like to concede the appeal in files AD-19-464, AD-19-466, and AD-19-467. It argues that the CRA's decision was given on February 20, 2015, whereas the Claimant stated that he worked from 2009 to 2013. Under section 52(5) of the EI Act, the Commission must find that the Claimant made a false or misleading statement or representation, which the Commission has not shown. The Commission argues that the fact that the employment was later recognized as non-insurable does not prove that the Claimant was aware of the situation and that he made a claim, knowing that the employment was not insurable.

[17] The Tribunal is of the view that the Commission could not reasonably find that the Claimant had made a false or misleading statement based on the mere fact that the CRA decided, after the benefit periods, that the Claimant's employment was not insurable.

[18] After reviewing the files, the General Division decision, and the parties' submissions, the Tribunal is of the view that the appeals should be allowed in files AD-19-464, AD-19-466, and AD-19-467 because the General Division erred in its interpretation of section 52(5) of the EI Act.

CONCLUSION

[19] The appeal is allowed in files AD-19-464, AD-19-466, and AD-19-467.

[20] The Claimant's withdrawal in file AD-19-465 is acknowledged.

Pierre Lafontaine

Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	Richard-Alexandre Laniel (counsel), Representative for the Appellant Manon Richardson, Representative for the Respondent