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

[TRANSLATION]

Citation: *L. B. v Canada Employment Insurance Commission*, 2020 SST 491

Tribunal File Number: AD-19-572

BETWEEN:

L. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 15, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, L. B. (Claimant), established an Employment Insurance benefit period. She completed her reports online every two weeks. Following an investigation, the Employment Insurance Commission (Commission) found that the Claimant had worked for the employer X and received a salary during the weeks of August 17, August 24, August 31, and September 7, 2014, but she had not reported it.

[3] The Commission determined that the salary that the Claimant received constituted earnings and allocated it to the weeks worked. The Commission also decided to impose a non-monetary penalty on the Claimant for having knowingly made false or misleading statements.

[4] The Claimant requested a reconsideration, but the Commission maintained its position. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

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

[6] The Tribunal granted leave to appeal. The Claimant argues that the General Division made its decision without regard for the material before it. She also argues that the General Division failed to observe a principle of natural justice.

[7] The Tribunal dismisses the Claimant's appeal.

ISSUES

[8] Did the General Division make its decision without regard for the material before it?

[9] Did the General Division fail to observe a principle of natural justice?

ANALYSIS

Appeal Division's Mandate

[10] 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]

[11] 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.

[12] Therefore, unless the General Division failed to observe a principle of natural justice, made an error of 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 1: Did the General Division make its decision without regard for the material before it?

[13] The General Division found that the amounts that the Claimant received from her employer X constituted earnings that must be allocated under section 36(4) of the *Employment Insurance Regulations* (EI Regulations).

[14] The Claimant does not dispute that she worked for the employer X and received a salary during the weeks of August 27, August 24, August 31, and September 7, 2014.

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

[15] The Claimant argues that the General Division ignored her testimony and the documentary evidence supporting her position that she did report the amounts she received and that she did not receive benefits for the weeks in question.[2] She bases her position on the table [translation] "payment history details" that shows that she reported the amounts and that she received no benefits during the weeks in question.[3]

[16] The Tribunal finds that the General Division did not ignore the Claimant's evidence. Instead, it placed greater weight on the Commission's explanation that the table that the Claimant submitted outlining the history of payments, which indicates the code 80 for the four weeks in question, was printed on February 25, 2019—after the transactions that the Commission had made to change the earnings and of which the Claimant was notified by a letter dated February 5, 2019.[4] The table also follows the notice of debt that was sent to the Claimant on February 26, 2019.[5]

[17] Furthermore, the evidence shows that the Claimant used the internet reporting service to apply for Employment Insurance benefits between August 10 and September 20, 2014. She reported that she had not worked and reported no earnings in her August 17, August 24, August 31, and September 7, 2014, reports.[6]

[18] The Commission also provided details about the transactions covering that period.[7] There we can see:

> - A payment was made on August 22, 2014, for the period from August 10 to 23, 2014.
>
> - A payment was made on September 5, 2014, for the period from August 24 to September 6, 2014.
>
> - A payment was made on September 19 for the period from September 7 to 13, 2014.

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[2] GD3-73 and GD10-2.
[3] GD3-73.
[4] GD3-65.
[5] GD3-67.
[6] GD3-15 to GD3-37.
[7] GD3-45.

[19] As the General Division found, the preponderant evidence shows that the Claimant did not report the amounts received and that she received benefits for the weeks in question. The General Division correctly found that the salary that the Claimant received constituted earnings and that it must be allocated to the weeks worked in accordance with section 36(4) of the EI Regulations.

[20] This ground of appeal is dismissed.

Issue 2: Did the General Division err when it found that the Claimant had knowingly made false or misleading statements?

[21] The General Division also had to decide whether the Commission was justified in imposing a penalty on the Claimant for having knowingly made false or misleading statements under section 38 of the *Employment Insurance Act* (EI Act).

[22] Parliament's only requirement for imposing a penalty is that of knowingly—that is, with full knowledge of the facts—making a false or misleading statement. Therefore, the absence of the intent to defraud is of no relevance.

[23] The General Division found that the Claimant received benefits during the periods in question while she was working for X. The employer confirmed the amounts that the Claimant received. She did not report her employment or her earnings, so the Claimant's statements were false or misleading.

[24] As a result, the Claimant was responsible for explaining the existence of her inaccurate answers; she had to show that she did not know that her answers were wrong.

[25] As the General Division emphasized, the subjective knowledge test makes it possible to take common sense and objective factors into account.

[26] The General Division found that a penalty was justified because the Claimant knew that she had worked during the weeks related to the reports that she completed. It found that, in the absence of a reasonable explanation and in answering no to the simple question [translation] "Did you work or receive earnings during the period covered by

this report? This includes self-employment or employment for which you will not be paid or will be paid later," the Claimant knew that she was making a false statement.

[27] The Claimant argues that there was no reason to impose a penalty because she reported the amounts that she received and she did not receive benefits for the weeks in question. However, for the reasons mentioned above, the overwhelming evidence is to the contrary.

[28] The Tribunal finds that the General Division correctly established the applicable legal test. It applied this test to the facts that the Claimant brought forward and, after it had considered all of the circumstances, examined whether the Claimant had knowingly made false or misleading statements under section 38 of the EI Act.

[29] The General Division also rightly found that the Commission had used its discretionary power judicially when it imposed a non-monetary penalty on the Claimant in accordance with section 41.1 of the EI Act.

[30] This ground of appeal is dismissed.

Issue 3: Did the General Division fail to observe a principle of natural justice?

[31] The Claimant takes issue with the General Division for hearing her testimony without swearing her in and for not informing her of her recourse to the Appeal Division in the event of an unfavourable decision.

[32] The Claimant also takes issue with the General Division for not recording the hearing that took place on July 11, 2019. She argues that the absence of a recording harms her case before the Appeal Division.

[33] The Tribunal tried to obtain a copy of the recording of the General Division hearing. Unfortunately, the General Division told the Tribunal that the recording was not available.

[34] Before the General Division, the Claimant did not dispute that she worked for the employer X and received a salary during the weeks of August 17, August 24, August 31, and September 7, 2014.

[35] The Claimant argued before the General Division and the Appeal Division that she reported the amounts she received and did not receive benefits for the weeks in question. She relies on the table [translation] “payment history details” to support her position that she reported the amounts received and that she received no benefits during the weeks in question.

[36] The Tribunal is of the view that even without being sworn in, the Claimant’s testimony is not invalidated. The General Division had the opportunity to hear the Claimant’s testimony, to examine her documentary evidence, and to determine the weight it would assign to each. Of course, it would have been preferable for the Claimant to be duly sworn in, but the General Division is not subject to the same strict rules that courts are.

[37] With regard to the fact that the General Division did not indicate how to appeal the decision, the Tribunal finds that the Claimant received a letter attached to the General Division decision explaining how to appeal the decision to the Appeal Division. There is therefore no prejudice to the Claimant.

[38] The Tribunal is also of the view that the absence of a recording did not adversely affect the Claimant’s appeal. She had the opportunity to present all of her grounds of appeal to the Appeal Division. The Claimant has not successfully shown that the proceedings before the Appeal Division were unfair.

[39] This ground of appeal is dismissed.

CONCLUSION

[40] For the reasons mentioned above, the Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	June 5, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	L. B., Appellant