



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 283

Tribunal File Number: AD-16-457

BETWEEN:

E. C.

Appellant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DECISION On the Record

DATE OF DECISION: July 27, 2016

REASONS AND DECISION

INTRODUCTION

[1] On March 2, 2016, the General Division (“the GD”) of the Social Security Tribunal (“the Tribunal”) dismissed the Appellant’s appeal.

[2] An application for leave to appeal before the Appeal Division (« the AD”) was filed on March 21, 2016, and leave to appeal was granted on June 6, 2016.

[3] Leave to appeal was granted solely on the issue of the reconsideration of the claim, specifically the analysis of the effect of the delay between the claim for benefits and reconsideration of the claim.

[4] This appeal proceeded in the form of a hearing on the merits for the following reasons:

(a) the Member determined that no hearing was necessary;

(b) the Respondent conceded the appeal on the issue of the reconsideration under section 52 of the *Employment Insurance Act* (“the EI Act”); and

(c) the need to proceed as informally and quickly as possible in accordance with the criteria of the Social Security Tribunal’s rules relating to the circumstances and considerations of fairness and natural justice.

ISSUE

[5] The Tribunal’s AD must decide whether it should dismiss the appeal, give the decision that the GD should have given, refer the matter back to the GD for reconsideration or confirm, rescind or vary the decision.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Skills Development* (“the 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.

[7] Subsection 59(1) of the DESD Act provides that the AD may dismiss the appeal, give the decision that the GD should have given, refer the matter back to the GD for reconsideration in accordance with any directions that the AD considers appropriate or confirm, rescind or vary the decision of the GD in whole or in part.

SUBMISSIONS

[8] The Respondent concedes the appeal. It contends that there cannot have been a breach of procedural fairness in the treatment of the Appellant's appeal before the GD.

[9] The Appellant filed submissions on the issue of a violation of section 15 of the *Canadian Charter of Rights and Freedoms* and the question whether a hearing is appropriate and, if so, the form of hearing.

ANALYSIS

[10] The GD found that, in accordance with subsection 52(2) of the DESD Act, which clearly states that the GD may allow no more than one year within which to bring an appeal after the date on which the decision is communicated to the Appellant, the appeal was not heard.

[11] The decision granting leave to appeal reads as follows:

[19] In its decision, the GD held that the decision rendered by the Respondent following the reconsideration had been communicated to the Applicant on February 14, 2014, and that he had not completed his appeal within the prescribed time limit.

[20] The GD found that subsection 52(2) of the DESD Act clearly states that the GD may allow no more than one year after the date on which the decision is communicated to the Appellant within which to bring an appeal. Consequently, the appeal would not be heard.

[21] The Applicant did not outline his reasons for appeal by referring to subsection 58(1) of the DESD Act. In his reasons for appeal, he seemed to suggest that the GD had failed to observe a principle of natural justice 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.

[22] The GD noted in paragraph 4 of its decision: “The Appellant admits... that the decision rendered by the Respondent following the reconsideration was communicated to the Appellant on February 14, 2014...”

[23] This finding of fact appears to be erroneous and made without regard for the material before the GD. The Applicant claimed throughout the process that he did not have in his possession the necessary documents to complete his appeal filed in February 2014.

[24] The Applicant stated that he had received the missing documents with the letter of May 8, 2015, from the Minister of ESDC. One of those documents was the reconsideration decision rendered by the Respondent.

[25] The Applicant filed a copy of that decision in June 2015, and the Tribunal received that correspondence on June 22, 2015. The Tribunal treated that correspondence as a new Notice of Appeal before the GD.

[26] The Federal Court noted in its recent decision in *Bossé v. Canada (A.G.)*, 2015 CF 1142, that the issue of natural justice, specifically a breach of procedural fairness, is determinative of an application for judicial review of a refusal of leave to appeal by the Tribunal’s AD. The Court criticized certain forms of the Tribunal, the instructions for completing the forms and the guidance given by the Tribunal for completing an application. The Court found that there had been a breach of procedural fairness in the Tribunal’s treatment of the application.

[27] In this instance, the question whether there was a breach of procedural fairness in the treatment of the appeal application to the GD should be considered.

[28] The appeal has a reasonable chance of success on the ground of an error of fact, as described in paragraphs [22] to [25] above, and a breach of procedural fairness, described in the paragraphs [26] and [27].

[12] The relevant facts are not in dispute. Furthermore, the Respondent consents to the appeal being allowed and the matter being referred back to the GD for a decision on the merits.

[13] The GD failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. More particularly, there was a breach of procedural fairness.

[14] Having reviewed the submissions of the parties and the file, I allow the appeal.

CONCLUSION

[15] The appeal is allowed and the matter is referred back to the General Division of the Social Security Tribunal of Canada.

Shu-Tai Cheng
Member, Appeal Division