

Citation: *R. M. v. Canada Employment Insurance Commission*, 2015 SSTAD 510

Appeal Nos. AD-13-943, AD-14-145, AD-14-146 and AD-14-147

BETWEEN:

**R. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: April 21, 2015

DECISION: Appeal allowed

## **DECISION**

[1] On consent, the appeals are allowed. These files are returned to the General Division for reconsideration.

## **INTRODUCTION**

[2] On August 8, 2013, a member of the General Division summarily dismissed the appeals of the Appellant. In due course, the Appellant appealed to the Appeal Division.

[3] The Appellant filed one appeal against one decision of the General Division. However, because the General Division decision related to four separate files, Tribunal staff assigned four separate Appeal Division case numbers. I therefore join these four files (AD-13-943, AD-14-145, AD-14-146 and AD-14-147) as contemplated by s. 13 of the *Social Security Tribunal Regulations*. This decision applies to each of them.

[4] These appeals were decided on the record.

## **THE LAW**

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (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.

[6] As previously determined by the Federal Court of Appeal in *Canada (Attorney General) v. Jewett*, 2013 FCA 243, *Chaulk v. Canada (Attorney General)*, 2012 FCA 190, and many other cases, the standard of review for questions of law and jurisdiction in employment insurance appeals is that of correctness, while the standard of review for

questions of fact and mixed fact and law in employment insurance appeals is reasonableness.

## **ANALYSIS**

[7] In her appeals, the Appellant submits that she never knowingly made any false statements, never hid anything from the Commission, and was just reporting what everyone else was reporting. She also notes that many other workers at her company received their benefits with no issues, which led her to believe that she was correct to report as she did. She asks that her appeals be allowed.

[8] Although the Commission initially opposed these appeals, they now ask that the appeals be allowed and new hearings be ordered so that the Appellant can present her evidence fully. In essence, they now take the position that the initial appeals should not have been summarily dismissed.

[9] I am in agreement with the parties that this decision should not have been summarily dismissed. The Appellant was entitled to have her evidence heard at a hearing. It was not plain and obvious on the face of the record that her appeals were bound to fail. Although I make no finding on the matter, if accepted as true, her appeals could have succeeded. Therefore, it cannot be said that she did not have a reasonable chance of success.

[10] I note as well that the member did not correctly state or apply the test to determine whether or not a warning letter was appropriate, which requires subjective knowledge on the part of the claimant that the statements made were false. This is an error of law, reviewable on the correctness standard.

[11] I further note that the member appears to have determined that all the decisions under appeal were discretionary decisions of the Commission, and that he therefore only needed to determine whether or not they had been taken judicially. This is incorrect. Sections 9 and 11 of the *Employment Insurance Act*, for example, do not use the word “may” and as such are not discretionary. To find otherwise is an error of law, reviewable on the correctness standard.

[12] I agree with the parties that this decision cannot stand.

## **CONCLUSION**

[13] Therefore, on consent and for the reasons above, the appeals are allowed. These files are returned to the General Division for reconsideration.

*Mark Borer*

Member, Appeal Division