

Citation: *A. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 350

Appeal No. AD-13-107

BETWEEN:

A. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: March 17, 2015

DECISION

[1] The appeal is granted and the file is returned to the General Division of the Tribunal (Employment Insurance Section) for a new hearing.

INTRODUCTION

[2] On May 22, 2013, a panel of the board of referees determined that:

- The Appellant did not have just cause to leave his employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (the “Act”).

[3] The Appellant requested leave to appeal to the Appeal Division on July 3, 2013. Leave to appeal was granted on January 19, 2015.

ISSUE

[4] The Tribunal must decide if the board of referees erred in fact and in law when it concluded that the Appellant did not have just cause to leave his employment pursuant to sections 29 and 30 of the *Act*.

THE LAW

[5] Subsection 58(1) of 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.

STANDARD OF REVIEW

[6] The parties made no representations to the Tribunal regarding the applicable standard of review.

[7] The Tribunal acknowledges that the Federal Court of Appeal determined that the standard of review applicable to a decision of a board of referees or an Umpire regarding questions of law is the standard of correctness - *Martens c. Canada (A.G.)*, 2008 FCA 240 and that the standard of review applicable to questions of fact and law is reasonableness - *Canada (PG) v. Hallée*, 2008 FCA 159.

ANALYSIS

[8] In the interest of fairness and a possible breach of natural justice, namely the right to be heard, the Respondent recommends that the decision of the board of referees be set aside and the Appellant's file be returned to the SST-GD so the case can be heard anew and he can be given the opportunity to participate in a new hearing.

[9] It is the Respondent's position that the Appellant has grounds for appeal under subsection 58(2)(a) of the *DESD Act*.

[10] Considering the arguments raised by the Appellant, and the position of the Respondent, the Tribunal agrees that the appeal must be granted.

CONCLUSION

[11] The appeal is granted. The case will be returned to the General Division of the Tribunal (Employment Insurance Section) for reconsideration by a Member.

[12] The Tribunal orders that the decision of the board of referees dated May 22, 2013, be removed from the file.

Pierre Lafontaine

Member, Appeal Division