

[TRANSLATION]

Citation: *A. V. v. Canada Employment Insurance Commission*, 2015 SSTAD 495

Appeal No. AD-13-703

BETWEEN:

A. V.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: April 17, 2015

DECISION

[1] The appeal is allowed and the matter is referred back to the General Division (Employment Insurance Section) for a new hearing.

INTRODUCTION

[2] On June 26, 2013, a Board of Referees found that:

- The Applicant's earnings had been allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* ("the *Regulations*");
- The disqualification imposed under paragraph 18(a) of the *Employment Insurance Act* ("the *Act*") was justified because the Applicant had not proved his availability for work;
- The Applicant had voluntarily left his employment without just cause within the meaning of sections 29 and 30 of the *Act*;
- The imposition of a warning was justified under subsection 41.1(1) of the *Act*.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on August 16, 2013. The application for leave to appeal was allowed on January 9, 2015.

ISSUES

[4] The Tribunal must determine whether the Board of Referees erred in fact and in law in finding that:

- The earnings had been allocated in accordance with sections 35 and 36 of the *Regulations*;
- The Applicant had not proved his availability within the meaning of paragraph 18(a) of the *Act*;
- The Applicant had voluntarily left his employment without just cause within the meaning of sections 29 and 30 of the *Act*;

- The imposition of a warning was justified under subsection 41.1(1) of the *Act*.

THE LAW

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

(a) the Board of Referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the Board of Referees erred in law in making its decision or order, whether or not the error appears on the face of the record; or

(c) the Board of Referees based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

STANDARDS OF REVIEW

[6] The parties made no submissions concerning the applicable standard of review.

[7] The Tribunal notes that the Federal Court of Appeal has held that the standard of judicial review applicable to a decision of a Board of Referees or an Umpire on questions of law is correctness (*Martens v. Canada (AG)*, 2008 FCA 240) and that the standard of review applicable to questions of mixed fact and law is reasonableness (*Canada (AG) v. Hallée*, 2008 FCA 159).

ANALYSIS

[8] The Appellant is appealing the Board of Referees' decision on ground (c) in subsection 58(1) of the *DESD Act*. In his view, the Respondent and the Board of Referees based their decision on an erroneous finding of fact that they made in a perverse or capricious manner or without regard for the material before them (page AD1-3).

[9] The Respondent is of the opinion that the Board of Referees dismissed the appeal on all the issues but without making a complete analysis of the various issues and without

making any connection to the facts on file. It submits that the Board even erred in reciting the facts on file when it referred to the issuance of a notice of violation, which was not the case. It requests that the matter be referred back to the SST-GD for a *de novo* hearing.

[10] Having regard to the arguments in support of the Appellant's appeal and to the Respondent's position, and after reviewing the file and the Board of Referees' decision, the Tribunal agrees that the appeal should be allowed.

CONCLUSION

[11] The Tribunal allows the appeal and refers the matter back to the General Division (Employment Insurance Section) for a new hearing by a Member.

[12] The Tribunal orders that the Board of Referees' decision dated June 26, 2013, be removed from the file.

Pierre Lafontaine

Member, Appeal Division