[TRANSLATION]

Citation: ***C. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 1239**

Date: October 21, 2015

File number: AD-14-562

APPEAL DIVISION

Between:

C. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

Hearing held by teleconference on October 20, 2015

REASONS AND DECISION

DECISION

[1] The appeal is allowed with a variation to impose the disqualification as of December 20, 2013 rather than December 31, 2012, which will result in the cancellation of the Appellant's overpayment of $1,789.00.

INTRODUCTION

[2] On October 14, 2014, the General Division found that:

- The Appellant had left her employment without just cause within the meaning of sections 29 and 30 of the *Act*.

[3] The Appellant filed an application for leave to appeal to the Appeal Division on November 10, 2014. The application for leave to appeal was allowed on February 26, 2015.

ISSUE

[4] The Tribunal must determine whether the General Division erred in fact and in law in finding that the Appellant had voluntarily left her employment without just cause within the meaning of sections 29 and 30 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 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 or order, whether or not the error appears on the face of the record; or

(c) the General Division 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 Appellant made no submissions concerning the applicable standard of review.

[7] The Respondent submits that the standard of review applicable to a decision of a Board of Referees (now the General Division) or an Umpire (now the Appeal Division) 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).

[8] The Tribunal acknowledges that the Federal Court of Appeal has held that the standard of judicial review applicable to a decision of a Board of Referees (now the General Division) or an Umpire (now the Appeal Division) 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

[9] The Appellant is appealing the General Division's decision on grounds (*b*) and (*c*) in subsection 58(1) of the *Department of Employment and Social Development Act*. The Appellant alleges that, when she left her employment, she contacted the Respondent and spoke with an officer, and she was told that her file was in order and that there were no problems. She states that she did not conceal any information from the Respondent.

[10] The Respondent is of the opinion that the General Division did not err in law or in fact on the question of voluntary leaving.

[11] However, the Respondent checked the file to verify the information stated by the Appellant in her application for leave to appeal. The Appellant did in fact contact the Respondent on January 9, 2013 to inform it that she was taking a part-time training course in Montréal. The record of employment from the X convenience store was inputted into the

system by the Respondent on January 3, 2013, which means that the Respondent had the information concerning her voluntary leaving. The Respondent finalized the file on January 9, 2013 on the question of availability for work and continued paying the Appellant. The investigation into voluntary leaving did not occur until December 2013.

[12] The Respondent had the information in January 2013 and had an opportunity to take action in relation to the voluntary leaving, but it did nothing and continued paying the Appellant. As a matter of policy, an error by the Commission must be corrected as of the current date, that is, the date the decision was made in December 2013.

[13] The Respondent therefore recommends that the Appeal Division allow the Appellant's appeal with a variation to impose the disqualification as of December 20, 2013 rather than December 31, 2012, which would result in the cancellation of the Appellant's overpayment of $1,789.00.

[14] The Tribunal notes that this information was not provided to the General Division before it found that the Respondent had exercised its discretion judiciously under section 52 of the *Act*.

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

CONCLUSION

[16] The Tribunal allows the appeal with a variation to impose the disqualification as of December 20, 2013 rather than December 31, 2012, which will result in the cancellation of the Appellant's overpayment of $1,789.00.

Pierre Lafontaine
Member, Appeal Division