

Citation: *W. N. v. Canada Employment Insurance Commission*, 2015 SSTAD 1385

Date: December 1, 2015

File number: AD-14-268

APPEAL DIVISION

Between:

W. N.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

Heard by Teleconference on December 1, 2015

REASONS AND DECISION

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 March 11, 2014, the General Division of the Tribunal 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”);
- A penalty was imposed in accordance with the provisions of the *Act*.

[3] The Applicant requested leave to appeal to the Appeal Division on May 27, 2014. Leave to appeal was granted by the Appeal Division on March 10, 2015.

ISSUES

[4] The Tribunal must decide if the General Division 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* and that a penalty was imposed in accordance with 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 Appellant made no representations to the Tribunal regarding the applicable standard of review.

[7] The Respondent submits that the correct standard of review for mixed questions of fact and law is reasonableness - *Chaulk v. Canada (AG)*, 2012 FCA 190.

[8] The Tribunal acknowledges that the Federal Court of Appeal determined 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) 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 - *Chaulk v. Canada (AG)*, 2012 FCA 190, *Canada (PG) v. Hallée*, 2008 FCA 159.

ANALYSIS

[9] The Appellant submits that he did not attend the hearing before the General Division scheduled on March 3, 2014 because he did not receive the notice of hearing prior to the hearing.

[10] The Respondent makes no representations regarding the possible breach of natural justice, namely the Appellant's right to be heard.

[11] The Tribunal notices that the notice of hearing was sent to the Appellant by regular mail. There is no evidence on file that proves the Appellant received the notice of hearing prior to the hearing. In such scenarios, where there is no reason to question the Appellant's credibility, his version of the events will be accepted as accurate. The jurisprudence has decided that the slightest suspicion that a principle of natural justice has been breached is sufficient justification to refer the matter back to the General Division. This appears to be such a case.

[12] The Tribunal will therefore set aside the decision of the General Division and the Appellant's file will be returned to the General Division so the case can be heard anew and he can be given the opportunity to participate in a new hearing.

CONCLUSION

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

[14] The Tribunal orders that the decision of the General Division dated March 11, 2014, be removed from the file.

[15] The Tribunal recommends that the General Division send the notice of hearing to the Appellant by registered mail and by email.

Pierre Lafontaine

Member, Appeal Division