

Citation: *S. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 1423

Appeal No. AD-13-425

BETWEEN:

S. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: December 11, 2015

DECISION: Appeal allowed

DECISION

[1] The appeal is allowed. The case will be returned to the General Division for reconsideration.

INTRODUCTION

[2] On March 27, 2013, a panel of the board of referees (the Board) determined that the appeal of the Appellant from the previous determination of the Commission should be dismissed. In due course, the Appellant appealed that decision to the Appeal Division and leave to appeal was granted.

[3] On August 27, 2015, a teleconference hearing was held. Both the Appellant and the Commission attended and made submissions.

ANALYSIS

[4] This is a case involving the voluntary leaving of employment.

[5] In my decision granting leave to appeal, I held that:

The Applicant submits that the Board did not listen to his arguments, and that one member of the Board appeared ill and inattentive. He also submits that he was forced to leave his employment because if he did not he would lose his health care benefits, which constituted a significant part of his compensation package.

[6] It is not disputed that if the Appellant had not left his employment when he did, he would have no longer been eligible for post-retirement medical benefits due to an amended collective agreement between his union and the Employer.

[7] At the hearing before me, the Appellant added further details to both of these grounds of appeal. Specifically, he noted that one of the Board members admitted that he was ill and, in the Appellant's words, "all he wanted to do was go home". The Appellant also submitted that a second member was "in his own little world" and stared at the wall during the entire hearing.

[8] The Appellant also submitted that the Board did not seem to give serious consideration to his argument that his health care benefits represented a big part of the financial value of his employment and that losing them would represent a serious challenge. He further submitted that his wife is disabled, and that without his benefits he would not be able to afford her medications and treatments post-retirement.

[9] The Commission, for their part, supports the decision of the Board on the merits, but (not having been present at the Board hearing) takes no position regarding the allegations of the Appellant regarding the Board panel members. They ask that the decision be upheld.

[10] The Board, in its decision, concluded that since the Appellant had advanced notice of the change in post-retirement benefits, he should have found other employment before leaving. On this basis, they dismissed his appeal.

[11] I am troubled by the Board's decision. There is almost no situation involving voluntary leaving where it cannot be said that a claimant should have found alternative employment before leaving or should have simply stayed employed rather than leave their job. Simply saying this without any real analysis, as the Board has done here, is not proper.

[12] The Appellant raised legitimate arguments regarding his motive for leaving his employment. Essentially, he argued that if he did not leave he would lose a large sum of money (his health benefits) upon his retirement and that he therefore had no reasonable alternative.

[13] While I make no finding on the substance of the matter, this is an argument with a reasonable chance of success that should have been addressed by the Board. Because of this, I find that the Board failed to properly consider the Appellant's arguments, and thereby rendered an unreasonable decision.

[14] The correct remedy for this is a new hearing before the General Division.

CONCLUSION

[15] For the above reasons, the appeal is allowed. The case will be returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division