Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *H. H. v. Canada Employment Insurance Commission and Exclusive Transfer Enterprise Corporation*, 2016 SSTADEI 57

Appeal No. AD-13-106

BETWEEN:

H. H.

Appellant

and

Canada Employment Insurance Commission and Exclusive Transfer Enterprise Corporation

Respondents

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: February 2, 2016

DECISION: Appeal allowed

Canada

DECISION

[1] The appeal is allowed. The matter is returned to the General Division for reconsideration.

INTRODUCTION

[2] On April 10, 2013, a panel of the board of referees (the Board) allowed the Respondent Employer's appeal against the previous determination of the Commission.

[3] In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] On October 6, 2015, a teleconference hearing was held. All three parties attended and made submissions. The Employer was represented by counsel, while the Appellant and the Commission were self-represented.

THE LAW

[5] According to 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, 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.

[6] As previously determined by the Federal Court of Appeal in *Canada (Attorney General) v. Jewett*, 2013 FCA 243, *Chaulk v. Canada (Attorney General)*, 2012 FCA 190, and many other cases, the standard of review for questions of law and jurisdiction in

employment insurance appeals is that of correctness, while the standard of review for questions of fact and mixed fact and law in employment insurance appeals is reasonableness.

ANALYSIS

[7] This case involves allegations of job abandonment.

[8] The essence of the Appellant's appeal is that the Board erred by finding that he had voluntarily left his employment without just cause. He admits that a dispute took place, but states that after a very short "cool off" he returned to the workplace only to be dismissed by the Employer. He further submits that he did nothing wrong, and should not have been dismissed.

[9] The Employer, for their part, submits that the Appellant abandoned his employment when he refused to attend upon one of their large clients. They support the decision of the Board, and ask that the appeal be dismissed.

[10] The Commission, contrary to their earlier written submissions, now asserts that the Board erred by not making express findings of credibility regarding the contradictory evidence presented to the Board. The Commission also takes the position, again contrary to their earlier submissions, that the Board also failed to correctly state and apply the law as it relates to the voluntary leaving of employment. They ask that the appeal be allowed, and that a new hearing before the General Division be ordered.

[11] In its decision, the Board found that on the balance of probabilities it preferred the evidence of the Employer over that of the Appellant. The Board then found that the Appellant had voluntarily left his employment without just cause, and that he had reasonable alternatives to doing so (although it did not state any). In consequence, it allowed the appeal.

[12] Having considered the matter, I find myself in agreement with the Commission that the Board erred in the manner that it made its credibility findings.

[13] This case involves two mutually antagonistic parties who, separate from this Tribunal, are engaged in litigation regarding the circumstances surrounding the events in question. The Appellant continues to maintain his position that he did not abandon his job, but was "pushed out" by this Employer. The Employer continues to maintain their position that the Appellant refused work directions and therefore abandoned his job.

[14] Ultimately there were two versions of the truth before the Board, that of the Appellant and that of the Employer. It was the Board's role not just to determine which of these (or neither) was actually true, and make findings of fact accordingly, but to explain why it preferred one version over the other (or neither) and state how it came to its conclusions.

[15] In their decision, the Board stated that it preferred the Employer's evidence (and accepted that evidence) but did not say why. This is an error, reviewable on the correctness standard.

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

CONCLUSION

[17] For the above reasons, the appeal is allowed. The matter is returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division