



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *D. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 60

Tribunal File Number: AD-15-149

BETWEEN:

**D. P.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

and

**VITRES TEINTÉES MG LTÉE**

Added party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

HEARD ON: January 26, 2016

DATE OF DECISION: February 2, 2016

## **REASONS AND DECISION**

### **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 February 19, 2015, the Tribunal's General Division found that:

The Appellant had voluntarily left his employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Appellant requested leave to appeal before the Appeal Division on March 23, 2015. Leave to appeal was granted on June 12, 2015.

### **ISSUE**

[4] The Tribunal must decide whether the General Division erred in fact and in law in finding that the Appellant had voluntarily left his employment without just cause under sections 29 and 30 of the Act.

### **THE LAW**

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

(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 parties made no submissions concerning the applicable standard of review.

[7] The Tribunal notes that the Federal Court of Appeal ruled that the applicable standard of review for a decision of the Board of Referees (now the General Division) and an Umpire (now the Appeal Division) on a question of law is correctness – *Martens v. Canada (A.G.)*, 2008 FCA 240, and that the applicable standard of review for a question of mixed fact and law is reasonableness – *Canada (A.G.) v. Hallée*, 2008 FCA 159.

## **ANALYSIS**

[8] The Appellant submits that he was not added as a party following the appeal filed by the employer on September 2, 2014. He states that he received the third party notice of September 10, 2014, and that he immediately called the number provided so that he could be added to the file. The call centre allegedly told him that he would be added to the file and that he would receive a copy of the file, which he did not. He was therefore not notified of the date of the hearing before the General Division.

[9] The Respondent believes that there was a failure to observe the rule regarding a person's right to be heard (*audi alteram partem* rule) since the Appellant did not participate in the hearing before the General Division. The Respondent respectfully requests that the matter be returned to the Tribunal's General Division so that the Appellant can be heard.

[10] The Tribunal asked the Appellant during the appeal hearing specifically about the third party notice that was sent to him on September 10, 2014: he stated that once he received the third party notice, he contacted the call centre in order to immediately be added to the file.

[11] Although there was no mention of this in the file, the Tribunal found no reason to doubt the Appellant's credibility.

[12] Case law tells us that if there is the slightest doubt that a principle of natural justice was not respected, the Tribunal is justified in returning the file for a new hearing.

## **CONCLUSION**

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

[14] The Tribunal orders that the General Division's decision dated February 19, 2015, be removed from the file.

*Pierre Lafontaine*  
Member, Appeal Division