



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. D. v. Canada Employment Insurance Commission*, 2016 SSTADEI 74

Appeal Nos. AD-14-143

BETWEEN:

L. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division –Appeal

SOCIAL SECURITY TRIBUNAL MEMBER:: Mark BORER

DATE OF DECISION: February 10, 2016

DECISION Appeal dismissed

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On February 3, 2014, the General Division dismissed the Appellant's appeal against a 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 November 5, 2015, a teleconference hearing was held. Both the Appellant and the Commission attended and made submissions.

THE LAW

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act* (the DESDA), 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.

ANALYSIS

[6] This case revolves around natural justice and the right to be heard, as well as the law surrounding being dismissed for misconduct.

[7] In his Application for leave to appeal, the Appellant alleges that he attempted to join the scheduled General Division teleconference but was unable to do so “because the social tribunal system was not working”. Additionally, the Appellant repeats many of the arguments he made at the General Division and submits that his Employer’s evidence was full of inconsistencies. He asks that a new hearing be ordered.

[8] In his decision, the General Division member noted that the Appellant did not appear for the teleconference because he was allegedly unable to connect. No doubt concerned by the potential breach of the Appellant’s natural justice rights, the General Division member offered the Appellant an adjournment and a new hearing. For unknown reasons, the Appellant declined and asked that the member render a decision.

[9] The Commission, noting the above, supports the decision of the General Division. They submit that because the Appellant declined the new hearing that was offered to him, his rights have not been violated. The Commission asks that the appeal be dismissed.

[10] Although I have no evidence before me to support the Appellant’s version of events and have no reason to believe that systemic issues regarding the teleconference system exist, I am prepared to accept the possibility that in this case that through no fault of his own the Appellant was unable to connect.

[11] That being said, the General Division member was alive to the possibility that the Appellant might have been deprived of his right to be heard. By offering an adjournment and a new hearing, the member acted quickly and judiciously to resolve the issue and ensure justice was done.

[12] Because of this, I find that the Appellant’s natural justice rights were fully protected by the member. As the Appellant declined the offer of a new hearing, I do not accept his claim that the principles of natural justice have been breached. This ground of appeal must fail.

[13] On the merits of the matter, the Appellant (as noted above) has made allegations against his Employer and re-stated the arguments he made in writing to the General Division, but has not alleged any particular error on the part of the General Division.

[14] The role of the Appeal Division is to determine if a reviewable error set out in ss. 58(1) of the DESDA has been made by the General Division and if so to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene. It is not our role to re-hear the case *de novo*.

[15] Regardless, I have reviewed the General Division decision. I find that the member correctly stated the law as it relates to misconduct, made findings of fact supported by the evidence, applied the law in a reasonable manner to those facts, and came to conclusions that were entirely reasonable.

[16] There is no reason for the Appeal Division to intervene.

CONCLUSION

[17] For the above reasons, the appeal is dismissed.

Mark Borer

Member, Appeal Division