



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. R. M.*, 2016 SSTADEI 76

Appeal No. AD-14-575

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

R. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: February 10, 2016

DECISION: Appeal allowed

Canada 

DECISION

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

INTRODUCTION

[2] On November 7, 2014, a General Division member allowed the Respondent's appeal against the previous determination of the Commission.

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

[4] On December 1, 2015, a teleconference hearing was held. Both the Commission and the Respondent attended and made submissions.

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.

ANALYSIS

[6] This is a case where the Respondent voluntarily left her employment.

[7] The Commission submits that the General Division member erred by failing to make proper credibility findings as he should have done. They ask that the case be returned to the General Division for a new hearing.

[8] The Respondent argues that the General Division was right to believe her testimony over her Employer's testimony. She also continues to assert that she had no choice but to leave her job, and stands by her testimony before the General Division.

[9] In his decision, the General Division member correctly stated the appropriate law to be applied in cases of voluntary leaving. He then found that the Respondent was credible. Having made that finding, he went on to conclude that she had no reasonable alternative to leave her employment given all of the circumstances and allowed her appeal.

[10] Having considered the matter, I find myself in agreement with the Commission that the General Division member erred in the manner that he made his credibility findings.

[11] This case involves two mutually contradictory narratives. The Respondent's narrative included (among other things) allegations that her Employer did not permit her to take breaks during her shift and did not permit her to leave during a fire alarm or during a bomb threat. The Employer denied these allegations.

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

[13] In his decision, the General Division member stated that he found the Respondent credible and appeared to dismiss the Employer's evidence but did not explain why. This is an error.

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

CONCLUSION

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

Mark Borer

Member, Appeal Division