



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. K. v. Canada Employment Insurance Commission*, 2016 SSTADEI 108

Tribunal File Number: AD-15-878

BETWEEN:

H. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY:: Shu-Tai Cheng

HEARD ON: On the Record

DATE OF DECISION: February 25, 2016

REASONS AND DECISION

INTRODUCTION

[1] On December 8, 2015, the Appeal Division (AD) of the Social Security Tribunal of Canada (Tribunal) granted leave to appeal on the grounds that the Appellant had not been given an opportunity to be heard and, therefore, that a breach of natural justice may have occurred.

[2] The Tribunal requested the parties' submissions on the mode of hearing, whether one is appropriate and, also, on the merits of the appeal.

[3] The Respondent filed submissions which recommend that the Appellant be given the opportunity to present his case to the GD.

[4] In light of the Respondent's submissions, the materials the Appellant had filed previously and the information in the file, it was unnecessary for the Appellant to make further submissions.

[5] This appeal proceeded by on the basis of the record for the following reasons:

- a) The lack of complexity of the issue(s) under appeal.
- b) The information in the file, including the need for additional information.
- c) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[6] In light of the parties' submissions, it is unnecessary to hold an oral hearing at the AD.

ISSUE

[7] The AD of the Tribunal must decide whether it should dismiss the appeal, give the decision that the GD should have given, refer the case to the GD for reconsideration or confirm, rescind or vary the decision of the GD.

LAW AND ANALYSIS

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal are the following:

- (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.

[9] Leave to appeal was granted on the basis that the Appellant had set out reasons which fall into the enumerated grounds of appeal and that at least one of the reasons had a reasonable chance of success, specifically, under paragraph 58(1)(a) of the DESD Act.

[10] In particular, the decision granting leave to appeal stated:

[11] The GD decision states that the Applicant was notified of the hearing and that the notice was successfully delivered and signed for by the Applicant. It also states that the GD Member waited for fifteen minutes for the Applicant to join the conference call before the call was terminated.

[12] The Respondent was not present at the hearing, although it did file written representations for the GD's consideration. The decision was made based on information from the docket including the Respondent's representations and information from the employer.

[13] The Applicant asserts, in the Application, that he was wrongfully terminated and that he was forced into signing termination papers. He did not have the opportunity to present his side of the situation, which appears to be in conflict with some of the information in the docket.

[14] In addition, the Applicant notified the Tribunal on July 14, 2015 that he had had technical difficulties connecting to the teleconference line and asked for another hearing date. There is a telephone log, in the file, of the Applicant's call on July 14, 2015 marked "URGENT – Hearing Issue". The log is dated July 15, 2015 and confirms the telephone call on July 14. It is not clear from the file whether the GD Member was notified of the Applicant's urgent phone call on July 14, 2015 or not, or if or when the Member saw the

telephone log. While the GD decision is dated July 14, 2015, it was issued on July 16, 2015.

[15] Given the fundamental nature of the right to be heard, the conflicting information asserted, the Applicant's attempt to attend the hearing and his having notified the Tribunal of the technical problems he had trying to connect to the teleconference line, the situation warrants further review. For these reasons, I am satisfied that the appeal has a reasonable chance of success.

[11] The Respondent agrees that there was a breach of natural justice and recommends that the Appellant be given the opportunity to present his case to the GD. Specifically, the Respondent states: "Based upon a review of all the information on file, it is the Commission's position, that the sequence of events leading to the claimant being unable to attend the hearing at the correct time constitutes a Breach of Natural Justice in that the claimant had not been fully afforded the right to be heard."

[12] Section 59(1) of the DESD Act sets out the powers of the Appeal Division. It states:

The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

[13] Considering the submissions of the parties, my review of the GD decision and the appeal file, I allow the appeal. Because this matter will require the parties to present evidence, under the principle of *audi alteram partem*, a hearing before the GD is appropriate.

CONCLUSION

[14] The appeal is allowed. The case will be referred back to the General Division of the Tribunal for reconsideration.

Shu-Tai Cheng
Member, Appeal Division