



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. S. v. Canada Employment Insurance Commission*, 2016 SSTADEI 103

Appeal No. AD-14-300

BETWEEN:

D. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: February 24, 2016

DECISION: Appeal allowed

Canada 

DECISION

[1] On consent, the appeal is allowed.

INTRODUCTION

[2] On May 20, 2014, the General Division dismissed the Appellant'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 December 17, 2015, a teleconference hearing was held. The Appellant and the Commission each 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 appeal concerns whether or not the Commission was correct in determining that the Appellant left his job voluntarily without just cause.

[7] In their submissions to the General Division, the Commission asked that the Appellant's appeal be allowed. After the appeal had been filed, the Commission realized that the Appellant had not quit his job, but rather had taken a leave of absence. This meant

that the Commission had proceeded under the wrong section of the *Employment Insurance Act* and caused the Commission, quite properly, to concede that their initial determination was incorrect.

[8] The General Division, however, had other ideas.

[9] Although the General Division noted the position of the Commission, it nonetheless found that the Appellant was not on a leave of absence. They then upheld the Commission decision, and dismissed the appeal.

[10] The General Division did not cite any evidence to support their conclusions, and appears to have ignored Exhibit GD3-16, where the Employer confirms that the Appellant is on a leave of absence to attend school for physiotherapy.

[11] But even if I accept the finding that the Appellant was not on a leave of absence, I note the failure of the General Division to consider or apply *Canada (Attorney General) v. Marier*, 2013 FCA 39. In that case, the Court held that a claimant who leaves one job while still holding a second job has just cause for leaving their employment. It was clear from Exhibit GD3-11, and the parties agree, that the Appellant had more than one job. The General Division should have considered and applied *Marier*.

[12] If the General Division had properly applied the law and jurisprudence to the facts, it could have reached only one possible outcome: that the Commission had erred (as they admitted) and that the appeal should be allowed.

[13] In argument before me, the parties agreed that I should give the decision the General Division should have given and allow the appeal. I concur, and therefore allow the appeal on the basis that the Appellant did not quit his employment without just cause as initially determined by the Commission.

CONCLUSION

[14] For the above reasons and on consent, the appeal is allowed.

Mark Borer

Member, Appeal Division