Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *B. U. v. Canada Employment Insurance Commission,* 2016 SSTADEI 123

Appeal No. AD-14-171

BETWEEN:

B. U.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division –Appeal

DECISION BY:: Mark BORER

DATE OF DECISION: March 4, 2016

DECISION Appeal allowed

Canada

DECISION

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

INTRODUCTION

[2] On February 4, 2014, a General Division member 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 November 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 case involves the voluntarily leaving of employment.

[7] Although the Appellant raised a number of arguments, the essence of these arguments is that the General Division member erred by finding that he had voluntarily left his employment without just cause. The Appellant admits leaving his employment, but submits that he did so in response to serious safety violations involving working at height without proper safety gear which he felt endangered him.

[8] The Commission, for their part, submits that the Appellant should not have left his job as he did because he had reasonable alternatives to doing so. They support the General Division decision, and ask that the appeal be dismissed.

[9] In her decision, the General Division member correctly stated the law regarding voluntary leaving. She then found that the Appellant had left his employment voluntarily, and that she did not find sufficient evidence to support the proposition that all reasonable alternatives had been exhausted or that the working conditions were unsafe.
The member found that the Appellant could and should have spoken to the Employer regarding the safety situation before quitting. In consequence, the General Division member dismissed the appeal.

[10] Unfortunately, although the General Division mentioned the Appellant's evidence (found at Exhibit GD2-1) that he had spoken to the owner's son about his safety concerns and was told that he "would get used to the heights", she did not explain why this was not sufficient (in the context of this particular small business Employer) to constitute speaking to his Employer or why this did not contribute to showing that the Appellant had no reasonable alternatives to quitting, given all of the circumstances.

[11] While it was entirely open to the member to disregard this evidence as untrue or insufficient, it could not simply be ignored as it goes to the heart of the member's findings.

[12] I note as well that (found beginning at Exhibit GD2-5) two Notices of Contravention were issued by the Saskatchewan Labour Occupational Health and Safety Division regarding the very same safety concern raised by the Appellant. Although it is

true that this is by no means conclusive, it is evidence suggesting that the Appellant was correct in his safety concerns.

[13] Again, it was open to the member to disregard this evidence as to the Employer's safety situation, but it could not simply be ignored without good reason. I observe that the member found (at paragraph 34 of the decision) that the Notices did not "provide conclusive findings as of the outcome of the Notice[s]" when in fact at least one of the Notices (found at Exhibit DG2-5) stated that an immediate stop work order had been issued. That seems to me to be an immediate conclusive outcome, to say the least.

[14] Taken together, even given appropriate deference to the factual conclusions of the General Division member, the above findings without supporting reasons constitute a reviewable error.

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

CONCLUSION

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

Mark Borer

Member, Appeal Division