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

Citation: *A. M. v. Canada Employment Insurance Commission,* 2016 SSTADEI 147

Tribunal File Number: AD-15-849

BETWEEN:

A. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal decision

DECISION BY: Pierre Lafontaine

HEARD ON: March 15, 2016

DATE OF DECISION: March 15, 2016

Canada

REASONS AND DECISION

DECISION

[1] The appeal is allowed in part.

INTRODUCTION

[2] On June 15, 2015, the General Division of the Tribunal determined that:

> - The Appellant lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (the "*Act*").

[3] The Appellant requested leave to appeal to the Appeal Division on July 14, 2015 after receiving the General Division decision on July 9, 2015. Leave to appeal was granted on September 12, 2015.

ISSUE

[4] The Tribunal must decide if the General Division erred in fact and in law when it determined that the Appellant lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Act*.

THE LAW

[5] Subsection 58(1) of the *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.

STANDARD OF REVIEW

[6] The parties made no representations to the Tribunal regarding the applicable standard of review.

[7] The grounds of appeal in section 58 of the *DESDA Act* are identical to the grounds of appeal applicable to the former Employment Insurance Umpires in subsection 115(2) of the *Act*. Therefore, the Federal Court of Appeal jurisprudence on the nature of the appeal regarding former EI Umpires is relevant and persuasive.

[8] The Tribunal is of the opinion that the degree of deference the Appeal Division accords to the General Division decisions should be consistent with the deference accorded to the decisions of former board of referees by the Employment Insurance Umpires. An appeal before the Appeal Division is not an appeal in the usual sense of that word but a circumscribed review – *Canada (AG) c. Merrigan*, 2004 CAF 253.

[9] The Tribunal acknowledges that the Federal Court of Appeal determined that the standard of review applicable to a decision of a board of referees (now the General Division) or an Umpire (now the Appeal Division) regarding questions of law is the standard of correctness - *Martens c. Canada (AG)*, 2008 FCA 240 and that the standard of review applicable to questions of fact and law is reasonableness - *Dunsmuir v. New Brunswick*, 2008 SCC 9, *Canada (PG) v. Hallée*, 2008 FCA 159.

ANALYSIS

[10] With regards to the disqualification imposed pursuant to sections 29 and 30 of the *Act* and because the Appellant lost his employment by reason of his own misconduct within three weeks before the expiration of a term of employment, the Respondent recommends a partial concession.

[11] The reason for the recommendation is because pursuant to subsection 33(1) of the *Act*, when a claimant loses an employment because of their misconduct within three weeks before the expiration of a term of employment, the disentitlement lasts until the expiration of the term of employment as per section 33(2) of the *Act*. In keeping with that legislation, it is submitted that the Respondent should have imposed a disentitlement until September 30, 2014 instead of an indefinite disqualification, pursuant to subsection 30(1) of the *Act*. The Respondent recognizes that these were not the representations made to the General Division.

[12] The Appellant informed the Tribunal during the appeal hearing that he agrees with the recommendation of the Respondent.

[13] The Tribunal finds that the evidence before the General Division demonstrates that the Appellant was in fact employed as a Park Manager with RLC Enterprises Ltd up until September 15, 2014. He was going to work until September 30, 2014, at the end of the camping season. He therefore lost his employment because of his misconduct within three weeks before the expiration of his term of employment.

[14] In view of the above, the Tribunal agrees with the Respondent that the General Division should have imposed a disentitlement until September 30, 2014, instead of an indefinite disqualification, pursuant to subsection 30(1) of the *Act*.

CONCLUSION

[15] The appeal is allowed in part.

[16] A disentitlement until September 30, 2014 is imposed to the Appellant, instead of an indefinite disqualification.

Pierre Lafontaine

Member, Appeal Division