



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 181

Appeal No. AD-14-305

BETWEEN:

C. P.

Appellant

and

Canada Employment Insurance Commission and C/A Services Ltd.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: April 6, 2016

DECISION: Appeal allowed

DECISION

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

INTRODUCTION

[2] On March 19, 2014, a General Division member allowed the Respondent Employer'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 15, 2015, a teleconference hearing was held. All three parties 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 whether or not the Appellant had just cause to voluntarily leave her employment.

[7] I note at this stage that the Employer is a small business run primarily by a husband and wife team. The husband performs many of the day-to-day tasks required for the business, while the wife is President of the corporation and performs a more back-end role. In submissions before me, the Employer (as represented by the husband) described the President as the directing mind of the business.

[8] The Appellant appeals on the basis that the General Division member erred by failing to make findings of credibility in his decision. The Appellant admits that she left her employment, and that afterwards she regretted doing so. However, she is essentially arguing that the final conversation that she had with the President was of such an unpleasant and insulting nature that it shattered the trust between them and that she therefore had no reasonable alternative except to leave her employment.

[9] In oral argument before me, the Employer supported the decision of the General Division and noted that the Appellant was offered renewed employment after the final phone conversation with the President.

[10] The Commission, contrary to their initial determination and their submissions to the General Division, now supports the ultimate finding of the General Division member that the Appellant did not have just cause to leave her employment. However, they do not oppose a new hearing on the basis that the General Division member erred by failing to make explicit findings regarding the circumstances surrounding the leaving of employment, including findings of credibility.

[11] Having considered the matter, I find myself in agreement with the Appellant (and the Commission) that the General Division member erred in the manner that he made his findings.

[12] This case involves two parties who, separate from this Tribunal, are engaged in litigation regarding the circumstances surrounding the events in question. The Appellant states (as she did before the General Division member) that the President made comments to her that were of such an offensive nature that any continued employment would have been impossible. The Employer, on the other hand, continues to maintain that this was not so and that the Appellant had reasonable alternatives to leaving as a result.

[13] Ultimately there were two versions of the truth presented to the General Division member, that of the Appellant and that of the Employer. It was the 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.

[14] In his decision, after correctly stating the law and summarizing much of the evidence, the member stated (at paragraph 39) that the Appellant left her employment for personal reasons. He did not address the evidence of the Appellant regarding the nature of the final conversation with the President, or make any findings regarding that conversation.

[15] The Appellant has argued that the things said to her in the final conversation with the President were so unpleasant that they established just cause to leave her employment. Because of this, I do not see how a decision regarding whether or not the Appellant had just cause to leave her employment can be made without addressing the content of that final conversation and the Appellant's arguments regarding that conversation.

[16] It is the role of the General Division to hear witnesses, evaluate the evidence, and make findings of fact. The correct remedy for the error identified above is a new hearing before the General Division.

CONCLUSION

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

Mark Borer

Member, Appeal Division