



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. L. v. Canada Employment Insurance Commission and Maitland Valley Marina Ltd.*,
2016 SSTA DEI 180

Tribunal File Number: AD-15-1101

BETWEEN:

D. L.

Appellant

and

**Canada Employment Insurance Commission and Maitland Valley Marina
Ltd.**

Respondents

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: April 5, 2016

DECISION: Appeal allowed

Canada

DECISION

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

INTRODUCTION

[2] On August 26, 2015, 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 March 3, 2016, a teleconference hearing was held. All three parties attended and made submissions. The Appellant and the Employer were represented by counsel.

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 his employment.

[7] The Appellant appeals on the basis that the General Division member, because credibility findings were required, erred by failing to order an in-person hearing. The Appellant also argues that the member erred by failing to address his argument regarding safety in the workplace and his concerns about drug use by other employees.

[8] In oral argument before me, the Employer supported the decision of the General Division member and noted that they had offered to address the Appellant's safety issues by assigning a second employee to work with him on his shifts. They ask that the appeal be dismissed.

[9] The Commission also supports the decision of the General Division member and submits that the Appellant did not have just cause to leave her employment. They note that there were a number of reasonable alternatives available to the Appellant which he did not avail himself of, and ask that the appeal be dismissed.

[10] Having considered the matter, I reluctantly find myself of the view that the General Division member erred in the manner that he made his findings.

[11] This case involves two parties who, separate from this Tribunal, are engaged in a legal dispute regarding the circumstances surrounding the events in question. The Appellant repeats the arguments that he made to the General Division that, among other things, he was afraid for his safety because the Employer did not take steps to prevent a specified person from entering the area. The Employer, on the other hand, continues to maintain that they took appropriate steps to deal with the Appellant's concerns and that as a result the Appellant had reasonable alternatives to leaving.

[12] In his decision, after correctly stating the law, the General Division member found that the Appellant had quit his job by not showing up for work. Then (at paragraph 34) he found that the Appellant had reasonable alternatives to leaving, such as remaining employed, returning to work after quitting, or attempting to resolve his issues with his employer. He then dismissed the appeal without addressing the specific issues raised by the Appellant.

[13] I find this troubling. In the abstract, the above reasonable alternatives to leaving employment will always apply. By definition, an employee can always remain employed rather than leave their job voluntarily, for example.

[14] Of greater concern is the fact that in this highly contested matter the member made no explicit findings regarding the allegations raised by the Appellant. Were the Appellant's safety concerns well founded? Did the Employer's actions show that there was a reasonable alternative to quitting?

[15] The Appellant has argued that the situation was so bad that it established just cause to leave his employment. Because of this, I do not see how a decision regarding whether or not the Appellant had just cause to leave his employment can be made without first addressing the employment situation that existed at the time.

[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