



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. R. v. Canada Employment Insurance Commission*, 2016 SSTADEI 271

Tribunal File Number: AD-14-440

BETWEEN:

**C. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY:: Mark Borer

HEARD ON: April 22, 2016

DATE OF DECISION: May 24, 2016

## **DECISION**

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

## **INTRODUCTION**

[2] On June 23, 2014, a General Division member dismissed the appeal of the Appellant 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 April 22, 2016, an in-person hearing was held. The Respondent attended and made submissions by way of counsel. A Spanish interpreter was also in attendance.

[5] The Commission, for unknown reasons, informed the Tribunal that they would not be attending the hearing but would instead rely upon their written submissions. I therefore proceeded in their absence.

## **THE LAW**

[6] 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**

[7] This case revolves around the application of the law and jurisprudence regarding misconduct.

[8] The Appellant appeals against the decision of the General Division member on a number of different grounds. One of these grounds is that the General Division member did not properly consider the Appellant's arguments that she was 15 minutes late returning to work after the lunch break because she experienced extreme pain and had gone to see a doctor, and by so doing breached the principles of natural justice.

[9] The Commission supports the decision of the General Division and asks that the appeal be dismissed.

[10] The General Division member noted in his decision (at paragraph 13) that the Appellant testified that she needed to see a doctor and tried to contact her supervisor to tell him this but was unsuccessful. He also noted her evidence that she told another employee about her situation and that she could not "sign out" because the manager's office was closed.

[11] Continuing, the member correctly stated the law and cited appropriate jurisprudence from the Federal Court of Appeal. He then concluded that the Appellant had committed misconduct, and dismissed the appeal.

[12] Unfortunately, although the General Division mentioned the Appellant's largely uncontested evidence as noted above, he did not explain why he did not accept it. In fact, he made no further reference to it. Instead, he simply found that the Appellant had been warned regarding breaches of company policy and concluded that she had committed misconduct.

[13] Essentially, the Appellant was saying that she was in pain and needed to see a doctor, and that she tried in several different ways to let her Employer know this.

[14] If the member had accepted this evidence, it is difficult for me to see how the Appellant could have been considered to have committed an act of misconduct.

[15] Of course, it was entirely open to the member to disregard the Appellant's evidence as untrue or as insufficient to prove that the Appellant (unsuccessfully) attempted to contact her Employer. However, it could not simply be ignored. Doing so is a breach of the principles of natural justice which I am obligated to intervene to correct.

[16] I note that my above comments relate only to the Appellant's eligibility for benefits according to the *Employment Insurance Act*. As I made clear during the hearing, neither I nor any member of the Tribunal has jurisdiction to make findings regarding whether or not the Employer was justified in dismissing the Appellant or on any other employment related matter.

[17] The proper remedy for the above error is a new hearing at the General Division. It is therefore unnecessary to address the Appellant's other arguments.

## **CONCLUSION**

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

*Mark Borer*

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Member, Appeal Division