



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. A. v. Canada Employment Insurance Commission*, 2016 SSTADEI 381

Tribunal File Number: AD-14-297

BETWEEN:

**K. A.**

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: May 12, 2016

DATE OF DECISION: July 19, 2016

## **DECISION**

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

## **INTRODUCTION**

[2] Previously, 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] The Appellant and the Commission each attended and made submissions at the scheduled teleconference hearing.

## **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] Although a number of issues were raised at the hearing before me, this case ultimately revolves around whether or not the General Division member misunderstood the evidence given by the Appellant.

[7] The Appellant submits that the General Division member misunderstood his evidence. Specifically, he alleges that he testified that he **couldn't** find alternative housing in any community within a reasonable distance of his employment, but that the member (as stated in paragraph 26 of her decision) misheard him to be saying that he **could** find housing in a specified nearby community. If so, the Appellant notes that this would constitute a failure on the part of the member to produce a decision based upon the evidence.

[8] The Appellant further noted that he had been evicted from his home in September of 2013. In his mind, this and other circumstances that he faced meant that he had shown just cause for leaving his employment because he had nowhere to live and therefore no reasonable alternative.

[9] Present at the General Division hearing was a paralegal from the Community Unemployed Help Centre. She represented the Appellant at the General Division and again at the Appeal Division, and submitted at the hearing before me that the Appellant was correct and did not say what the General Division member found he said. As there is no available recording of the General Division hearing, I have no way of independently verifying whether this is so.

[10] The Commission, not having been present at the General Division hearing, takes no position on this particular argument. They do, however, support the ultimate conclusion of the General Division and ask that the appeal be dismissed.

[11] Memory is a fragile thing. It is entirely believable that in the absence of a recording to refresh his or her memory a member presiding over a hearing could innocently err in the manner alleged.

[12] For this reason, in the circumstances of this case I am prepared to give the Appellant and his representative the benefit of the doubt and accept their version of events. I make this finding because it is my view that the Tribunal should be zealous in its protection of the natural justice rights of the parties. I emphasize that I take no position on the substantive issue of whether or not, on the basis of the evidence presented, the Appellant had just cause to leave his employment.

[13] The proper remedy for this situation is a new hearing at the General Division so that the Appellant can present his case in full. It is therefore unnecessary to address the Appellant's other arguments.

## **CONCLUSION**

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

*Mark Borer*  
Member, Appeal Division