



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. T. v. Canada Employment Insurance Commission*, 2016 SSTADEI 382

Tribunal File Number: AD-15-276

BETWEEN:

N. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: July 19, 2016

DECISION

[1] The appeal is allowed.

INTRODUCTION

[2] Previously, a General Division member dismissed the Appellant's appeal on the issue of voluntary leaving. In a separate decision, the same General Division member also "dismissed with modifications" the Appellant's appeal on the issue of availability.

[3] In due course, the Appellant filed an application for leave to appeal both of these decisions and leave to appeal was granted.

[4] This appeal was decided on the record, and relates solely to the availability issue. The appeal on the issue of voluntary leaving will be dealt with in a separate decision.

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 is an unusual appeal.

[7] Initially, the Commission determined that the Appellant should be disentitled from receiving benefits because he was not available. Subsequently, however, the Appellant's

claim was converted to a sickness benefits claim. Because of this, the Commission agreed with the Appellant that his appeal to the General Division should be allowed as claimants receiving sickness benefits do not have to prove availability.

[8] Unfortunately, although the General Division member noted and agreed with the Commission submissions, he decided that the appeal should be “dismissed with modifications”.

[9] There are three problems with this.

[10] First, there is no such thing as “dismissed with modifications”. If an appeal is dismissed, the underlying decision is upheld in full.

[11] Second, even ignoring the above, I observe that no “modifications” were set out in the member’s decision.

[12] Third, the member offered no explanation as to why the appeal was dismissed (with modifications or otherwise) even though his preceding paragraphs would seem to indicate that the appeal should be allowed.

[13] The Commission, for their part, agrees that this appeal should be allowed.

[14] Therefore, on consent, I shall give the decision that should have been given: that the appeal on the issue of availability is allowed because the Commission was incorrect to disentitle the Appellant from receiving sickness benefits on the basis that he was not available.

CONCLUSION

[15] For the above reasons, the appeal is allowed.

Mark Borer
Member, Appeal Division