Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *N. V. v. Canada Employment Insurance Commission*, 2016 SSTADEI 389

Tribunal File Number: AD-15-193

BETWEEN:

N. V.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: June 9, 2016

DATE OF DECISION: July 20, 2016

Canada

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] This is an appeal from a decision of a member of the General Division. It concerns whether or not the Appellant was employed within the meaning of the *Employment Insurance Act* (Act) during the time in question.

[3] After leave to appeal to the Appeal Division was granted, a teleconference hearing took place. The Appellant and the Commission each appeared and made submissions.

THE LAW

[4] 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

[5] This case hinges solely on whether or not the Appellant was employed within the meaning of the Act and the *Employment Insurance Regulations* (Regulations). If the Appellant was employed, as the Commission determined, she cannot receive benefits.

[6] The Appellant submits that although she was working, she was not getting paid for her time. As such, she argues that she was not employed within the meaning of the law. She

notes that she was attempting to upgrade her skills as well as gain experience, and while she admits that she was hoping to be hired by the company at the end of this "training period" she argues that this should not disentitle her from receiving benefits.

[7] The Commission, on the other hand, supports the General Division decision and asks that the appeal be dismissed.

[8] In *Berube v. Employment and Immigration Canada*, A-986-88, the Federal Court of Appeal addressed this issue. After canvassing previous case law, they concluded that:

> "It can clearly be seen from all the foregoing not only that the board of referees erred in ignoring the unpaid nature of the applicant's work but also that, in the circumstances of the case at bar, one of the main questions that it had to answer was precisely that of whether the said work was really unpaid, namely if the applicant did not really expect to derive any financial benefit from it."

[9] Much more recently, in *Canada (Attorney General) v. Greey*, 2009 FCA 296, the Court noted *Berube* found at paragraphs 46 and 47 that:

> "… [the Tribunal] should have first identified the elements of the relationship between the parties which implied detecting some form of employment and the presence of a financial benefit or remuneration received or to be received in exchange for the provision of services.
>
> In other words, the proper test was whether [the claimant] expected to derive any *financial benefit therefrom*, that is from [the Employer], and not "some kind" of benefit independent of [the Employer]."

[10] In this case, the General Division member correctly stated the law and cited *Greey*. He then assessed the evidence, and concluded that the Appellant was performing unpaid work with the expectation (or at least the possibility) of being hired after the two week "training period" (and in fact was hired). On this basis, he found that the Appellant was hoping to derive a financial benefit from her work (eventual paid employment) and was therefore employed. He then dismissed the appeal.

[11] I find that, as evidenced by his decision, the member understood and applied the jurisprudence of the Court to the facts at hand. The Appellant has failed to convince me that

the member made any errors in doing so. I also find that the factual findings made by the member were entirely open to him based upon the evidence, and indeed I agree with them.

[12] I have found no evidence to support the grounds of appeal invoked or any other possible ground of appeal. In my view, as evidenced by the decision and record, the member conducted a proper hearing, weighed the evidence, made appropriate findings of fact, established the correct law, and came to a conclusion that was intelligible and understandable. There is no basis for me to intervene.

CONCLUSION

[13] For the above reasons, the appeal is dismissed.

Mark Borer
Member, Appeal Division