



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. D. v. Canada Employment Insurance Commission*, 2016 SSTADEI 415

Tribunal File Number: AD-16-560

BETWEEN:

A. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: August 12, 2016

DECISION

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

INTRODUCTION

[2] Previously, a member of the General Division determined that the Appellant's appeal should be dismissed. In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[3] This appeal was decided on the record.

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 appeal concerns whether or not the Appellant had good cause for the delay in filing her claim reports.

[6] Unfortunately, in his decision the General Division member dismissed the Appellant's appeal even though he failed to apply the law to the facts or to make findings of fact.

[7] The Commission admits that the member erred by so doing. Notwithstanding this, they ask that I uphold his decision because in their view the Appellant has failed to prove that she had good cause for her delay in filing her reports.

[8] With respect, I cannot agree that this appeal should be dismissed.

[9] It is trite law that the General Division is the primary trier of fact, not the Appeal Division. It is the General Division that is tasked with hearing evidence, determining the law, making findings of fact, applying the law to those facts, and coming to a conclusion.

[10] While I recognize that the Commission stands by their initial determination and therefore supports the ultimate conclusion reached by the General Division member, it is not appropriate for me to usurp the role of the General Division and perform those functions.

[11] Instead, the correct remedy for the above identified error is a new General Division hearing. In the circumstances of this case, I find that to do otherwise would be to breach the natural justice rights of the Appellant.

CONCLUSION

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

Mark Borer

Member, Appeal Division