



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. C. D.*, 2016 SSTADEI 465

Tribunal File Number: AD-15-187

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

C. D.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: June 9, 2016

DATE OF DECISION: September 7, 2016

DECISION

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

INTRODUCTION

[2] Previously, a General Division member allowed the Respondent's appeal against the previous determination of the Commission.

[3] In due course, the Commission filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] On June 9, 2016, a teleconference hearing was held. Both the Commission and the Respondent attended and made submissions.

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 a case where the Respondent voluntarily left her employment.

[7] Among other arguments, the Commission submits that the General Division member erred by ignoring various pieces of evidence in coming to his conclusions. Specifically, they

argue that the member failed to explain why the fact that the Employer was willing to extend a previously granted leave of absence was not deemed to be a reasonable alternative to leaving her employment. They ask that their appeal be allowed.

[8] The Respondent argues that the General Division was right to accept that she had shown just cause for leaving her employment. She also continues to assert that she had no choice but to leave her job, and stands by her testimony before the General Division.

[9] In his decision, the General Division member correctly stated the appropriate law to be applied in cases of voluntary leaving. He then found (at paragraph 41) that the Respondent moved home to take care of a member of her immediate family. Having made that finding, he went on to conclude that as this met para. 29(c)(v) of the *Employment Insurance Act* (Act), she had no reasonable alternative to leave her employment given all of the circumstances and allowed her appeal.

[10] Unfortunately, there are several problems with this conclusion.

[11] First, it is not disputed that the Respondent left her employment on May 9, 2014. This was **after** the death of her family member, not before.

[12] It is therefore difficult for me to see how the voluntary leaving could be justified by the need to care for this family member.

[13] Second, it was not disputed that the Respondent had been on leave from January 7, 2014, and that there was evidence (found at GD3-25) that this leave could have been renewed on a monthly basis for up to one year.

[14] It may well be that given her legal and personal situation the Respondent had no reasonable alternative to leaving her employment. But I cannot see how the General Division member could reach this conclusion without addressing why simply renewing the leave of absence every month was not a reasonable alternative to resigning her position.

[15] Having found the above, I must conclude that the General Division member erred such that I am obligated to intervene.

[16] Although the Commission asks that I allow their appeal and give the decision the General Division should have given, I find that the correct remedy for the above errors is a new hearing before the General Division so that the Respondent can make her case in full.

CONCLUSION

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

Mark Borer
Member, Appeal Division