



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. Y. v. Canada Employment Insurance Commission*, 2016 SSTADEI 504

Tribunal File Number: AD-16-506

BETWEEN:

**P. Y.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

HEARD ON: September 22, 2016

DATE OF DECISION: October 7, 2016

## **REASONS AND DECISION**

### **DECISION**

[1] The appeal is allowed and the file is returned to the General Division for a new hearing.

### **INTRODUCTION**

[2] On December 14, 2015, the General Division of the Tribunal determined that:

- The Appellant left his employment without just cause in accordance with sections 29 and 30 of the *Employment Insurance Act (Act)*;
- The imposition of a penalty was justified in accordance with section 38 of the *Act* for making a misrepresentation by knowingly providing false or misleading information to the Respondent;
- A notice of violation was issued in accordance with section 7.1 of the *Act*.

[3] The Appellant is deemed to have requested leave to appeal to the Appeal Division on January 13, 2016 since he supplied his grounds of appeal less than 30 days after being requested by the Tribunal. Permission to appeal was granted on May 20, 2016.

### **ISSUES**

[4] The Tribunal must decide if the General Division erred in fact and in law when it concluded that:

- The Appellant left his employment without just cause in accordance with sections 29 and 30 of the *Act*;
- The imposition of a penalty was justified in accordance with section 38 of the *Act*;
- A notice of violation was issued in accordance with section 7.1 of the *Act*.

## **THE LAW**

[5] Subsection 58(1) of the *Department of Employment and Social Development Act (DESD Act)* states that the only grounds of appeal are the following:

- (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.

## **STANDARD OF REVIEW**

[6] The Appellant made no representations to the Tribunal regarding the applicable standard of review. The Respondent submits that the applicable standard of review regarding questions of law is the standard of correctness and that the standard of review applicable to questions of fact and law is reasonableness - *Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[7] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (AG) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that “When it acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court”.

[8] The Federal Court of Appeal further indicated that:

“Not only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of "federal boards", for the Federal Court and the Federal Court of Appeal”.

[9] The Court concluded that “Where it hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act”.

[10] The mandate of the Appeal Division of the Social Security Tribunal as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (AG)*, 2015 FCA 274.

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or 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, the Tribunal must dismiss the appeal.

## **ANALYSIS**

[12] The Appellant submits that the General Division did not consider all of his arguments related to the reasons why he left his employment. He pleads that the General Division did not consider that his working environment was unsafe, that the employer was abusive, and that the employer did not respect labor laws. He also submits that the decision of the General Division was based on speculation and not facts.

[13] The Respondent recommends, in view of the position of the Appellant and in the interest of natural justice, that the matter be returned to the General Division for redetermination on all issues.

[14] In view of the arguments of the Appellant, the Tribunal proceeded to listen to the recording of the hearing before the General Division. Contrary to the representations of the Appellant, the arguments related to an unsafe working environment, an abusive employer, and the non-respect of employment laws were not raised before the General Division.

[15] In his request for reconsideration and in support of his appeal to the General Division, the Appellant did not mention these arguments in support of his position. He stated that after more than a month, he was not able to find a full time job and that he was advised to apply for jobs not only online, but also by showing up in person to hand out his CVs . This was a task that was impossible with an overnight job, so he waited a little longer and contacted Employment Insurance. He was told by an agent that he was allowed to quit his on-call overnight job if he could afford the loss of its income, and if it was for the purpose of finding a full time job with better hours and income.

[16] In view of the above, the submission of the Appellant that the General Division did not consider all his arguments has no merits.

[17] However, the General Division made several findings in its decision that were not based on actual facts proven before it. For example, it stated in support of its decision that it was “very possible ...that the Appellant was unreliable and breached his obligations to the Employer”. The General Division also stated that “it was more likely than not that the Appellant brought about the termination of his employment for the purpose of studying for the exam and preparing for his eventual trip shortly after his exam was written.” These findings of the General Division are speculative and not supported by the evidence. The Tribunal has no choice to conclude that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner.

[18] It also appears from the decision of the General Division that it concluded, without considering the explanation of the Appellant, that he knowingly misrepresented the facts when he completed the reports. The Appellant stated that he answered “No” to the question: “We need to know why you stopped working for this employer. Was the reason other than layoff or on call?” because he was on call.

[19] The General Division concluded that the Appellant should have known that he was providing false statements. In doing so, the General Division seems to have applied an objective test.

[20] Furthermore, the negative finding by the General Division regarding the Appellant's credibility is incorrectly based on the fact that the Appellant would have admitted that he purposely avoided telling the Respondent the truth regarding the circumstances of the termination of his employment because he did not want to "play the game".

[21] The testimony of the Appellant was rather to the effect that he did not want to "play the blame game" to determine if he had been laid off or had left his employment since he had from the beginning taken the position that he had left his job. The Tribunal finds that even if the Appellant had been laid off, he could have still answered "No" to the question of the Respondent. Therefore, this erroneous finding by the General Division does not support a conclusion that the Appellant knowingly made a false statement when he answered that he did not stop working for other reasons than being on call.

[22] To impose a penalty to the Appellant, the General Division had to conclude, on a balance of probabilities, that the Appellant subjectively knew that he was making false or misleading statements - *Canada c. Purcell*, A-694-94.

[23] In view of this conclusion on the issue of penalty, the decision of the General Division on the issue of the notice of violation cannot stand.

[24] For the above mentioned reasons, and after review of the appeal file, the decision of the General Division, and the arguments of the parties, the Tribunal agrees that the matter should be sent back to the General Division of the Tribunal (Employment Insurance Section) for a new hearing by a different Member.

## **CONCLUSION**

[25] The appeal is allowed and the file is returned to the General Division for a new hearing by a different Member.

[26] The decision of the General Division dated December 14, 2015, is to be removed from the file.

Pierre Lafontaine  
Member, Appeal Division