



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. W. v. Canada Employment Insurance Commission*, 2016 SSTADEI 544

Tribunal File Number: AD-15-341

BETWEEN:

D. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: August 16, 2016

DATE OF DECISION: November 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 dismissed the Appellant's appeal.

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

[4] A teleconference hearing was held. The Appellant and the Commission each 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 case involves whether or not the Appellant had just cause to voluntarily leave his employment.

[7] The Appellant appeals on the basis that the General Division member did not properly address his argument that he left because he had been discriminated against by his Employer.

[8] The Commission supports the decision of the General Division member and submits that the Appellant did not have just cause to leave her employment. They ask that the appeal be dismissed.

[9] Having considered the matter, I reluctantly find myself of the view that the General Division member erred in the manner alleged by the Appellant.

[10] In his appeal to the General Division, the Appellant attempted to prove that he had been discriminated against on the basis of his immigration status. Specifically, he testified that his Employer would not permit him to take up the more senior position he had originally been offered because he only had a temporary work permit and was not a permanent resident.

[11] His evidence was that although he accepted the lesser position for the time being, he did so in the hope that he could resolve his immigration issues.

[12] Although I make no finding as to whether or not the Appellant had shown just cause to leave his employment, on the face of the record the member does not offer any comment on the Appellant's arguments.

[13] In his decision, after an extensive summary of the evidence and a lengthy recounting of the law, the General Division member found (at paragraph 25) that the Appellant had reasonable alternatives to leaving, such as remaining employed or looking for another job before quitting. He then dismissed the appeal without any further analysis.

[14] I find this troubling. In the abstract, the above reasonable alternatives to leaving employment will always apply. By definition, an employee can always remain employed rather than leave their job voluntarily, for example.

[15] Of even greater concern is the fact that the member made no explicit findings regarding the allegations raised by the Appellant. Was the Appellant discriminated against?

If so, did the Appellant have any reasonable alternatives to quitting having regard to all of the circumstances?

[16] The Appellant has argued that his situation was so wrong that it established just cause to leave his employment. Because of this, I do not see how a decision regarding whether or not the Appellant had just cause to leave his employment can be made without first addressing the employment situation that existed at the time.

[17] It is the role of the General Division to hear witnesses, evaluate the evidence, and make findings of fact. The correct remedy for the error identified above is a new hearing before the General Division.

CONCLUSION

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

Mark Borer

Member, Appeal Division