Citation: *D. T. v. Canada Employment Insurance Commission,* 2016 SSTADEI 553

Tribunal File Number: AD-15-1097

BETWEEN:

D. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: October 6, 2016

DATE OF DECISION: November 21, 2016

Canada

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 appeal concerns whether or not the Appellant had no reasonable alternative, given all of the circumstances, to voluntarily leave his employment.

[7]   In his decision, the General Division member stated (at paragraph 29) that the Appellant gave evidence to the effect that he left his employment before certain alleged

changes to his hours/salary took place. The member accepted this evidence, and concluded that a reasonable alternative (among others) would have been to "stay employed and see how things worked out".

[8]   At the hearing before me, however, the Appellant argued that he had already begun to experience a change in salary before leaving his job and that he was therefore justified in leaving his employment. He stated that his shifts had been reduced to approximately 32 hours a week from 40 hours a week in the month before he left, and continued to hold the view that his hours would have been reduced further.

[9]   I note that the member was aware of these arguments (as evidenced by paragraph 12 of his decision) and further note that the member was also aware that evidence in the file (such as a statement made to the Commission by the Employer found at exhibit GD3- 20, referenced at paragraph 14 of the member's decision) supported the view that the Appellant's hours had already been cut.

[10]   Unfortunately, the member's decision does not explain why he disregarded these pieces of evidence and concluded instead (at paragraph 32 and elsewhere in his decision) that the Appellant left his employment before any reduction in hours took place.

[11]   Out of fairness to the member, I recognize that the testimony offered by the Appellant at the General Division hearing was somewhat confusing and that it may have seemed that the Appellant accepted that he had left his position before any changes to his hours took place.

[12]   I also wish to be clear that it was entirely open to the member to reject the position taken by the Appellant or to find that there was insufficient evidence to show that the Appellant had no reasonable alternative to leaving his employment, given all of the circumstances. But if the decision was to be based upon all of the evidence and submissions, the above evidence and submissions could not simply be ignored.

[13]   Therefore, with great reluctance, I find that the General Division member erred by not basing his decision upon all of the evidence before him and that I am obligated to intervene to correct this error.

[14]   This decision cannot stand.

CONCLUSION

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

Mark Borer

Member, Appeal Division