



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. R. v. Canada Employment Insurance Commission*, 2016 SSTADEI 583

Tribunal File Number: AD-16-1235

BETWEEN:

**A. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

and

**TESC Contracting**

Added Party

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

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DECISION BY: Mark Borer

DATE OF DECISION: December 21, 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 was available during the time in question.

[6] The Appellant argues that the General Division member was mistaken when he found that the Appellant had voluntarily left his employment rather than being laid off. He also submits that the member did not apply the correct test in upholding a penalty and a notice of violation.

[7] The Employer made no submissions.

[8] The Commission, having considered the file and the decision, admits that the member did not properly determine whether or not the Appellant had knowingly made a false statement and thus erred. The Commission also submits that the General Division decision does not properly resolve contradictions in the evidence regarding whether or not the Appellant voluntarily left his employment or was laid off. They ask that a new hearing be ordered.

[9] I agree that nowhere in his decision did the member actually explain on what basis he determined that the Appellant knowingly made a false statement as he was required to do. I also agree that the issue of whether or not the Appellant left his employment voluntarily or was laid off was not properly canvassed by the member.

[10] Because of the above errors, a new hearing is required so that the parties can make their respective cases in full.

## **CONCLUSION**

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

*Mark Borer*

Member, Appeal Division