Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *R. V. v. Canada Employment Insurance Commission,* 2017 SSTADEI 31

Tribunal File Number: AD-16-819

BETWEEN:

**R. V.**

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: January 24, 2017

DATE OF DECISION: January 26, 2017

Canada

## REASONS AND DECISION

## DECISION

[1] The appeal is dismissed.

## INTRODUCTION

[2] On May 13, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Appellant had voluntarily left his employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Appellant is deemed to have filed an application for leave to appeal to the Appeal Division on June 16, 2016, after being notified of the General Division's decision on May 27, 2016. Leave to appeal was granted on July 29, 2016.

## FORM OF HEARING

[4] The Tribunal determined that the hearing of this appeal would be conducted by teleconference for the following reasons:

- the complexity of the issue or issues
- the fact that the credibility of the parties is not a prevailing issue
- the cost-effectiveness and expediency of the hearing choice
- the requirement to proceed as informally and as quickly as possible, while observing the rules of natural justice

[5] The Appellant attended the hearing with his daughter, C. G. Manon Richardson represented the Respondent.

## THE LAW

[6] Pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the only grounds of appeal are as follows:

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.

## ISSUE

[7] The Tribunal must decide whether the General Division erred in determining that the Appellant had voluntarily left his employment without just cause under sections 29 and 30 of the Act.

## SUBMISSIONS

[8] The Appellant submits the following reasons in support of his appeal:

- The General Division failed to consider the state of his health, which had forced him to stop working.
- The General Division erred in claiming that he did not have medical evidence to justify his voluntary departure based solely on the ground that his attending physician did not confirm his diagnosis until after his voluntary departure.
- The delay in his diagnosis does not alter the fact that he was unable to work while waiting to see his physician.

[9] The Respondent submits the following reasons against the Appellant's appeal:

- The General Division erred neither in law nor in fact, and it properly exercised its jurisdiction.

- To determine whether a claimant has just cause to leave his or her employment, it must be asked whether, on a balance of probabilities, leaving was the only reasonable alternative, having regard to all the circumstances.

- The Appellant did not have just cause for leaving his employment. He could have discussed with his employer the stressful situation and talked about it with his union. If he was not capable of working, he could have taken sick leave and awaited the outcome of the tests instead of leaving his employment.

- The Appellant chose to leave his employment to retire instead of exploring the various alternatives that he had.

- The Tribunal does not have the authority to retry a case or to substitute its discretionary power for that of the General Division. Subsection 58(1) of the DESD Act limits the Tribunal's jurisdiction. 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, and the decision is unreasonable, the Tribunal must dismiss the appeal.

**STANDARDS OF REVIEW**

[10] The Appellant made no submissions regarding the appropriate standard of review in this appeal.

[11] The Respondent submits that the appropriate standard of review for questions of law is correctness, and that the appropriate standard of review for questions of mixed fact and law is reasonableness - *Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[12] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (Attorney General) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that when the Appeal Division "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."

[13] 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.

[14] The Federal Court of Appeal concludes by emphasizing 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."

[15] The mandate of the Tribunal's Appeal Division as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[16] 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

[17] First, the Tribunal will consider only the evidence presented to the General Division to render the current decision. It is not for the Appeal Division to allow evidence that could have been submitted at the hearing before the General Division, as the hearing before the Appeal Division is not a *de novo* hearing. The Appeal Division's powers of intervention are limited to what is provided for under subsection 58(1) of the DESD Act.

[18] The Appellant argued in his appeal that he felt unwell when he left his employment. He claimed he had not received the support of his family physician, who had not told him to stop working when he left, despite his inability to work. He questioned his authority. He also submitted that the conflict with his supervisor had not helped his health situation. He therefore decided to quit his job in order to focus on himself.

[19] The General Division dismissed the Appellant's appeal, finding that:

> [translation]
> [24] The Appellant submitted that the health problems he was having had compelled him to retire.
>
> [25] The Tribunal considers that a reasonable alternative to the Appellant leaving would have been him getting a medical note recommending that take time off from work before leaving his employment.
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> [26] The Appellant stated several times that he had seen a doctor on several occasions, but he had not obtained a medical recommendation specifically advising him that he should be off work or enter retirement (Exhibits GD3-3 to GD3-14, GD3-16, GD3-19 to GD3-21 and GD3-23).
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> [27] Despite the health problems that he had and the symptoms that he described, the medical evidence that the Appellant submitted does not show that the Appellant was unable to work for medical reasons before voluntarily leaving his employment.
>
> [28] Furthermore, the medical certificates he provided were submitted several months after the Appellant had stopped working, on April 15, 2015, and several weeks before he officially retired on July 8, 2015.

> [29] In a medical certificate issued on September 22, 2015, the physician indicated [translation] "Although I did not prescribe a work stoppage for Mr. R. V. in April 2015, his decision to retire was motivated by health issues noted during his check-up on February 19, 2015, and still present on September 1, 2015." (Exhibit GD3-21).
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> [30] The medical note provided on November 11, 2015, states that the Appellant was incapable of doing any gainful employment, for medical reasons, from July 12, 2015, to November 11, 2015 (Exhibit GD3-26). In this case, the Appellant's inability to work was established for a period in which the Appellant had already stopped working for his employer.
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> [31] In his claim for benefits, the Appellant otherwise responded in the negative to the question: "Did you retire because you felt you were no longer capable of performing your tasks?" (Exhibit GD3-8).
>
> [32] The medical evidence that the Appellant submitted does not support, in an objective fashion, the notion that he was incapable of working due to health reasons before his voluntarily departure (***Dietrich*, A-640-93**).

[20] In his Employment Insurance application, the Appellant indicated in the voluntary separation from employment questionnaire that he had voluntarily resigned because he was retiring, and that his physician had not advised him to retire. He submitted that he had left his employment before becoming ill, despite the fact he was capable of performing his tasks (GD3-7 and GD3-8).

[21] In a later interview, the Appellant stated that he had decided [translation] "to retire from working for his employer, because he no longer felt well there." He explained that he took his work seriously and that he could no longer tolerate his superior not respecting [translation] "his seniority" or the seniority of other employees, which made him [translation] "insecure." He added that he had seen a physician before leaving his employment because he was having stomach and liver problems, but that the physician had not recommended that he stop working or even quit his job. He stated that he had made a personal decision to leave his employment so that his situation at work did not further affect his health (GD3-16).

[22] The medical certificate filed before the General Division dated September 22, 2015, confirms that his physician had not put the Appellant off work and that the Appellant had decided on his own to retire. The medical certificate filed before the General Division dated November 11, 2015, states that the Appellant was incapable of performing any work, but only for a period of time after his voluntary departure.

[23] The evidence before the General Division clearly shows that no physician recommended to the Appellant that he stop working or that he retire due to health reasons. The Appellant even stated that he had left his employment before becoming ill, despite the fact that he was capable of performing his tasks.

[24] As the General Division has indicated, the medical evidence that the Appellant submitted before the General Division does not support, in an objective fashion, his inability to work for health reasons, before he left voluntarily. Furthermore, the Tribunal finds that the initial statements that the Appellant made rather demonstrate the he was able to work when he left voluntarily.

[25] The Tribunal is also of the view that the General Division did not err in finding that the problems that the Appellant had described pertaining to the conflictual relationship he had with his superior does not show that his working conditions had become so intolerable that he had no other alternative but to leave his employment.

[26] After reviewing the file and the General Division's decision, the Tribunal finds that the grounds for appeal that the Appellant raised are unfounded. The General Division's decision is based on the evidence brought before it, and its decision is consistent with the legislative provisions and case law.

[27] There is no reason for the Tribunal to intervene.

## CONCLUSION

[28] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division