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

[TRANSLATION]

Citation: *S. F. v. Canada Employment Insurance Commission,* 2017 SSTADEI 13

Tribunal File Number: AD-15-317

BETWEEN:

S. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: January 10, 2017

DATE OF DECISION: January 20, 2017

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On April 14, 2015, the General Division of the Social Security Tribunal of Canada (Tribunal) found that:

> - The Appellant lost his employment with L'Accueil Jeunesse de Grand-Mère by reason of his own misconduct under sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] On May 28, 2015, the Appellant filed an application for leave to appeal before the Appeal Division. Leave to appeal was granted on July 20, 2015.

[4] The hearing for this appeal was held on June 23, 2016. It was continued on January 10, 2017, at the request of the Appellant so that he could inform the Tribunal of the results of his case.

TYPE OF HEARING

[5] The Tribunal determined that the appeal would be heard via teleconference for the following reasons:

- The complexity of the issue or issues;
- The fact that the parties' credibility was not one of the main issues;
- The cost-effectiveness and expediency of the hearing choice;

- The need to proceed as informally and quickly as possible while complying with the rules of natural justice.

[6] At the hearing on June 23, 2016, the Appellant was present and the Respondent was represented by Louise Laviolette. Neither of the parties attended the subsequent hearing on January 10, 2017, despite having received a notice of hearing.

THE LAW

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

(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

[8] The Tribunal must decide whether the General Division erred in finding that the Appellant lost his employment by reason of his own misconduct under sections 29 and 30 of the Act.

SUBMISSIONS

[9] The Appellant submitted the following arguments in support of his appeal:

- The General Division erred in law by failing to consider his first employment at the Commission Scolaire de l'Énergie

- He argues that there is no law that indicates that a claimant who has two jobs and loses one must have the hours for the other job reduced;

- His Employment Insurance claim is based on his job with the Commission Scolaire de l'Énergie and not his other job.

[10] The Respondent submitted the following arguments to counter the Appellant's appeal:

- The General Division's decision complies with the legislation, as well as with the case law;

- Ample case law, both at the at umpire and Federal Court of Appeal levels, has been established to the effect that claimants for whom a driver's licence is an essential condition of employment who lose this employment following the loss of their driver's licence as a result of infraction are guilty of misconduct within the meaning of section 30 of the Act;

- In this case, the Appellant lost his employment because he lost his licence to drive, and as a result, no longer satisfied one of his employment's essential requirements;

- The General Division properly assessed the evidence and its decision is well-founded in fact and in law.

STANDARDS OF REVIEW

[11] The Appellant made no submissions concerning the applicable standard of review.

[12] The Respondent submits that the Federal Court of Appeal has determined that the standard of review applicable to a decision of a board of referees or an Umpire regarding questions of law is the standard of correctness - *Martens c. Canada (Attorney General),* 2008 FCA 240 and that the standard of review applicable to questions of fact and law is reasonableness - *Canada (Attorney General) v. Hallée,* 2008 FCA 159.

[13] 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 "[w]hen 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".

[14] 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.

[15] The Federal Court of Appeal concludes by emphasizing that "[w]here 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."

[16] 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 (Attorney General)*, 2015 FCA 274.

[17] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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

[18] The hearing of this appeal began on June 23, 2016, with the parties in attendance. It was continued on January 10, 2017, at the request of the Appellant so that he could inform the Tribunal of the results of his case. The Appellant did not inform the Tribunal of the results of his case and the parties did not attend the hearing on January 10, 2017, despite receiving a notice of hearing.

[19] The facts on file are relatively simple and undisputed.

[20] The Appellant submitted a renewal application on June 29, 2014, following the end of his contract with the Commission Scolaire de l'Énergie. When he filed his application, he stated that he had been dismissed from L'Accueil Jeunesse Grand-Mère on May 13, 2014, because he did not meet the position's requirements.

[21] On August 6, 2014, the Respondent contacted the employer to enquire about the reasons for dismissal. The employer explained that the Appellant had lost his driver's licence and that, since this was an employment requirement and that his licence had been suspended, they had no choice but to dismiss him. On the same day, the Appellant confirmed having lost his driver's licence for drinking and driving and that a licence was an essential condition to the job.

[22] The Respondent found that the Appellant had lost his employment on May 13, 2014, by reason of his own misconduct within the meaning of the Act. It therefore imposed an indefinite disqualification effective May 11, 2014, in accordance with subsection 30(1) of the Act. It also informed the Appellant that he had not worked long enough to be entitled to benefits given that he had lost his employment at L'Accueil Jeunesse Grand-Mère on May 13, 2014, due to misconduct. He had accumulated only 185 hours of insurable employment whereas he needed 595 hours.

[23] On several occasions, the Federal Court of Appeal has established that employees who must hold a valid driver's licence as an essential occupational requirement lose their licence through their own fault would therefore fail to meet an explicit employment contract condition: *Canada (Attorney General) v. Wasylka*, 2004 FCA 219; *Canada (Attorney General) v. Cooper*, 2003 FCA 389; *Casey v. Canada (Attorney General)*, 2001 FCA 375; *Canada (Attorney General) v. Cartier*, 2001 FCA 274; *Canada (Attorney General) v. Turgeon*, A-582-98.

[24] However, the Appellant submits that the General Division erred in law by failing to consider his first employment at the Commission Scolaire de l'Énergie. He maintains that, while it's true that he lost his part-time job at L'Accueil Jeunesse Grand-Mère after losing

his driver's licence, his claim for Employment Insurance is based on his regular employment at the Commission scolaire de l'Énergie.

[25] The Respondent submits that employees who lose one of their concurrent employments for misconduct within the meaning of subsection 30(1) of the Act are disqualified from receiving benefits unless, since losing the employment, they have been employed in insurable employment for the number of hours required to receive benefits.

[26] In this case, the Appellant lost his part-time job on May 13, 2014, but had gone on to work for the Commission scolaire de l'Énergie, his regular employment, up until June 27, 2014.

[27] Subsection 30(5) of the Act, read in combination with subsection 30(1), clearly states that when a claimant loses their employment for misconduct, the insurable hours of employment accumulated from any employment prior to the date of loss of the employment are excluded from the calculation of the hours required to qualify for benefits--*Canada (Attorney General) v. Trochimchuk*, 2011 FCA 268.

[28] Between May 13, 2014, and June 27, 2014, the Appellant accumulated only 185 hours of insurable employment whereas he required 595 hours to qualify.

[29] The Tribunal sympathises with the Appellant's situation; however, it has no choice but to dismiss the appeal.

CONCLUSION

[30] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division