



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *G. J. v. Canada Employment Insurance Commission*, 2017 SSTADEI 22

Tribunal File Number: AD-16-575

BETWEEN:

**G. J.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Mark Borer

DATE OF DECISION: January 24, 2017

## **DECISION**

[1] The appeal is allowed. The matter will be returned to the General Division for reconsideration. I further direct that it be heard by a different General Division member.

## **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] A teleconference hearing was held. The Commission and the Appellant attended and made submissions. The Employer, although properly notified of the hearing, did not attend. I note that the listed contact person for the Employer signed for the notice of hearing, as evidenced by a Canada Post signature page.

[4] As I was satisfied that all parties were aware of the hearing, I chose to proceed in the absence of the Employer.

## **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 allegations of misconduct.

[7] The Appellant argues, among other things, that the General Division member failed to make appropriate credibility findings when he preferred the Employer's evidence over that of the Appellant.

[8] The Commission, having considered the file and the decision, now admits that the member erred as the Appellant has alleged. Although they maintain their position that the Appellant's underlying appeal should not succeed on the merits, they ask that a new hearing be ordered in the interests of natural justice.

[9] Ultimately, there were two versions of the truth presented to the General Division member, that of the Appellant and that of the Employer. It was the member's role not just to determine which of these (or neither) was actually true, and make findings of fact accordingly, but to explain why he preferred one version over the other (or neither) and state how he came to his conclusions.

[10] Unfortunately, I am not satisfied that the General Division member did so. Having read his decision it is not clear to me why he disregarded the Appellant's version of events.

[11] To be clear, it was (and remains) entirely open to the member to find that they prefer the Employer's evidence over that of the Appellant. But this cannot be done without explaining why.

[12] I agree with the Commission and the Appellant that a new hearing is required so that the parties can make their respective cases in full.

## **CONCLUSION**

[13] For the above reasons, the appeal is allowed. The matter is returned to the General Division for reconsideration. I direct that it be heard by a different General Division member.

*Mark Borer*

Member, Appeal Division