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

[TRANSLATION]

Citation: *D. M. v. Canada Employment Insurance Commission*, 2017 SSTADEI 36

Tribunal File Number: AD-16-847

BETWEEN:

D. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

9170-1292 Québec Inc.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: January 26, 2017

DATE OF DECISION: January 30, 2017

Canada

REASONS AND DECISION

DECISION

[1] The appeal is allowed and the matter transferred to the Tribunal's General Division (Employment Insurance Section) for a new hearing by a new member.

INTRODUCTION

[2] On May 18, 2016, the General Division determined that:

- the Appellant was disentitled from receiving Employment Insurance benefits from June 28 to July 20, 2015, as a result of a period of leave from his employment without just cause; and

- the Appellant was disqualified from receiving Employment Insurance benefits as of July 25, 2015, because he had voluntarily left his employment.

[3] On June 22, 2016, the Appellant applied for leave to appeal to the Appeal Division. He had been informed of the decision on May 25, 2016. Leave to appeal was granted on June 28, 2016.

ISSUE

[4] The Tribunal must decide whether the General Division erred in determining that the Appellant was disentitled from receiving Employment Insurance benefits from June 28 to July 20, 2015, as a result of a period of leave without just cause, and whether he should be disqualified from receiving Employment Insurance benefits as of July 25, 2015, because he had voluntarily left his employment.

THE LAW

[5] 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.

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.

STANDARDS OF REVIEW

[6] The parties maintain 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.

[7] 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."

[8] 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.

[9] The Federal Court of Appeal concluded by noting 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."

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

[11] 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, or its decision was unreasonable, the Tribunal must dismiss the appeal. The parties made no submissions regarding the appropriate standard of review.

ANALYSIS

[12] The Appellant submits that the General Division erred in ruling on issues that were not before it. He claims that, in the absence of a reconsideration decision on any voluntary leaving and/or leave from employment without just cause, the General Division could not render a decision on those points without overstepping its jurisdiction. He contends that he was entitled to receive advance notice of the issues that were going to be addressed before the General Division so that he could make a full answer and defence. The Appellant submits that, for that reason, he was denied a fair hearing before the General Division.

[13] The Respondent does not object to the file being referred back to the General Division if the Tribunal believes there has been a failure to observe a principle of natural justice.

[14] The Appellant appealed the Respondent's decision resulting from its request for reconsideration under section 112 of the *Employment Insurance Act* (Act) pertaining to the Respondent's decision on the loss of his job due to his own misconduct within the meaning of sections 29 and 30 of the Act.

[15] The General Division rendered a decision unfavourable to the Appellant after apparently determining that there had been no misconduct. Without giving the Appellant the opportunity to defend himself on those points, the General Division determined that the Appellant had voluntarily left his job without just cause, and that he had taken leave without just cause.

[16] It is important to note that a fair hearing presupposes adequate notice of the hearing, the opportunity to be heard, the right to know what is alleged against a party, and the opportunity to answer those allegations.

[17] The Appellant was entitled to know what was being alleged against him before the hearing, and he was unable to defend himself against allegations of voluntarily leaving his employment and going on leave without just cause.

[18] Furthermore, considering that the Respondent had chosen the ground of misconduct as the basis for disentitlement, the Tribunal is of the opinion that the General Division should have considered this particular issue when it heard the Appellant's appeal – *Hamilton v. Canada (Attorney General),* A-175-87.

[19] For the reasons set out above, the Tribunal is of the opinion that it is appropriate to intervene and refer the file back to the General Division for a new hearing by a new member.

CONCLUSION

[20] The Tribunal allows the appeal and refers this case back to the General Division (Employment Insurance Section) for a new hearing by a new member.

[21] The Tribunal orders that the General Division's decision dated May 18, 2016, be removed from the file.

Pierre Lafontaine

Member, Appeal Division