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

Citation: *D. G. v. Canada Employment Insurance Commission,* 2017 SSTADEI 49

Tribunal File Number: AD-16-1046

BETWEEN:

D. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: January 17, 2017

DATE OF DECISION: February 9, 2017

Canada

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] Previously, a General Division member dismissed the Appellant's appeal.

[3] In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] A teleconference hearing was held. The Appellant attended and made submissions, but the Commission did not. As I was satisfied that the Commission had been properly notified of the hearing, I proceeded in their absence.

THE LAW

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA), 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 whether or not the Appellant had just cause within the meaning of the *Employment Insurance Act* (Act) to voluntarily leave his employment.

[7] In his submissions, the Appellant alleges that the General Division member erred by finding that he had not shown just cause to leave his employment. He argues that his mother

was ill and needed his support, and that he left his employment to care for her. He asks that his appeal be allowed.

[8] As noted above, for unknown reasons the Commission did not attend the hearing. In their written submissions, they expressed support for the General Division decision (substantially for the reasons given by the General Division member) and asked that the appeal be dismissed.

[9] Prior to the hearing, the Appellant submitted certain new documents to the Tribunal by email. Unfortunately, Tribunal staff were unable to access these documents. At the Tribunal's request, the Appellant re-sent them but the problem persisted.

[10] During the hearing, the Appellant explained that these new documents were medical records relating to his mother's condition at the time he left his employment. He admitted that he was submitting them now because the General Division member dismissed his initial appeal. At the time of the General Division hearing, it did not occur to him that these documents might be helpful.

[11] As I explained to the Appellant, the Appeal Division does not normally accept new documents because this is not a hearing *de novo*. I also note that these documents were available at the time of the General Division hearing and therefore could not properly be considered as new facts.

[12] Given the above, I declined to exercise my discretion to enter these documents into evidence and did not consider them further.

[13] In her decision, the General Division member summarized the evidence and submissions. She then correctly stated the law and cited relevant jurisprudence. Finally, she made findings of fact to the effect that the while the Appellant made an entirely reasonable decision to move to be closer to his mother, he had not shown that this was the only reasonable alternative, given all of the circumstances.

[14] The General Division member was sympathetic to the Appellant and appreciated the health challenges faced by the Appellant's elderly mother. But ultimately, after considering

the sort of tasks that the Appellant was undertaking for his mother, the member concluded that the choice to move was a personal one which did not constitute just cause for voluntarily leaving his employment because there were reasonable alternatives.

[15] Having considered the material before me, I can find no reviewable error in the General Division decision. Like the General Division member, I am sympathetic to the situation faced by the Appellant. But the law does not permit me to intervene unless I detect an error within the meaning of ss. 58(1) of the DESDA.

[16] In this case, I have found no evidence to support any ground of appeal. In my view, as evidenced by the decision and record, the member conducted a proper hearing, weighed the evidence, made reasonable findings of fact, established the correct law, properly applied that law to the facts, and came to a conclusion that was intelligible and understandable.

[17] There is no reason for the Appeal Division to intervene.

CONCLUSION

[18] For the above reasons, the appeal is dismissed.

Mark Borer

Member, Appeal Division