



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *W. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 116

Tribunal File Number: AD-17-12

BETWEEN:

**W. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

and

**1265767 Ontario Ltd / Joe's Value Mart**

Added Party

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

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DECISION BY: Mark Borer

DATE OF DECISION: March 23, 2017

## **DECISION**

[1] On consent, the appeal is allowed.

## **INTRODUCTION**

[2] Previously, the General Division dismissed the Appellant's appeal against the previous determination of the Commission.

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

[4] This appeal was decided on the record.

## **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 whether the Commission was correct in determining that the Appellant left his job voluntarily without just cause.

[7] In their submissions to the General Division, the Commission and the Appellant each noted that the Appellant held a second job. Unfortunately, neither the Commission (in their

initial determination) nor the General Division member (in his decision) realized the full importance of this.

[8] In *Canada (Attorney General) v. Marier*, 2013 FCA 39, the Federal Court of Appeal held that a claimant who leaves one job while still holding a second job has just cause for leaving their employment because by virtue of that second job they did not cause themselves to become unemployed.

[9] The Commission now admits their initial error (and that of the General Division member), and asks that I apply *Marier* and allow the appeal. They see no need for a new hearing.

[10] There can be no doubt, given the above, that the General Division member (and the Commission before him) should have considered and applied *Marier*.

[11] It is also true that if the General Division member (and the Commission before him) had properly applied the law and jurisprudence to the facts, he could have reached only one possible outcome: that the Commission had erred (as they now admit) and that the appeal should be allowed.

[12] I therefore find that the Appellant had just cause for voluntarily leaving his employment and that the General Division decision cannot stand.

## **CONCLUSION**

[13] For the above reasons and on consent, the appeal is allowed.

*Mark Borer*

Member, Appeal Division