



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 142

Tribunal File Number: AD-17-123

BETWEEN:

H. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: April 5, 2017

REASONS AND DECISION

DECISION

[1] The appeal is allowed and the file returned to the General Division for a new hearing by a different member.

INTRODUCTION

[2] On December 28, 2016, the General Division of the Tribunal determined that the Appellant had lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Appellant requested leave to appeal to the Appeal Division on February 7, 2017, after receiving the General Division decision on January 9, 2017. Leave to appeal was granted on February 15, 2017.

ISSUE

[4] The Tribunal must decide whether the General Division erred when it determined that the Appellant had lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the Act.

THE LAW

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal are the following:

- 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] The Appellant submits that the General Division based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it. He pleads that the General Division erred when it concluded that he had been ordered to return to work by September 21, 2015.

[7] The Respondent agrees with the Appellant that the General Division erroneously concluded that he had been expected to return to work on September 21, 2015. The Respondent submits that this return date is not supported by the evidence. Furthermore, the Respondent submits that the conclusion of the General Division that the Appellant did not have an agreement to return to work on October 13, 2015 because he was told by his manager to return on September 21, 2015 during the telephone conversation held on September 4, 2015 is unreasonable and is not consistent with the evidence.

[8] Given the foregoing, the Respondent submits that the Appellant has grounds for appeal under subsection 58(1) of the DESD Act.

[9] After a review of the appeal docket and the General Division decision, the Tribunal agrees with the parties' submissions, and it allows the Appellant's appeal.

CONCLUSION

[10] The appeal is allowed and the file returned to the General Division for a new hearing by a different member.

Pierre Lafontaine
Member, Appeal Division