



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *P. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 160

Tribunal File Number: AD-17-169

BETWEEN:

P. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: April 20, 2017

REASONS AND DECISION

DECISION

[1] The appeal is allowed.

INTRODUCTION

[2] On January 25, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Appellant had voluntarily left his employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] On February 22, 2017, the Appellant filed an application for leave to appeal before the Appeal Division. Leave to appeal was granted on March 3, 2017.

ISSUE

[4] The Tribunal must decide whether the General Division erred when it concluded that the Appellant did not have just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of the Act.

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; 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.

STANDARDS OF REVIEW

[6] The Appellant made no submissions concerning the applicable standard of review.

[7] The Respondent submitted 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.

[8] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (Attorney General) v. Jean*, 2015 FCA 242, states in paragraph 19 of its decision that “[w]hen it 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.”

[9] 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 [...]

[10] The Federal Court of Appeal concludes by emphasizing that “[w]here 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.”

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

[12] 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 had made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

ANALYSIS

[13] The Appellant maintained that the General Division had failed to rule on the issue before it and that it thereby refused to exercise its jurisdiction.

[14] He argued that the General Division had to decide on the issue of voluntary leaving. However, the General Division determined that, pursuant to paragraph 27(1)(b) of the Act, the Appellant had, without just cause, failed to seize an opportunity for suitable employment, and it found that, given the circumstances, there was good reason to impose a disentitlement to benefits as of January 7, 2015.

[15] He argued that the General Division's conclusion is erroneous and in contravention of the Act. Sections 27 to 37 are not interchangeable, given that they address different scenarios and have different consequences for a claimant.

[16] The Respondent confirmed that, in this case, it had issued an erroneous decision. It should have decided on a refusal of employment rather than on a voluntary leaving. The Respondent stated that it had issued a decision based on the wrong section of the Act and that the facts on file did not support a new decision under section 27 of the Act. Given the circumstances, the Respondent concedes the Appellant's appeal.

[17] After considering the arguments in support of the Appellant's appeal and the Respondent's position, and after reviewing the file, the Tribunal agrees that the appeal should be allowed.

CONCLUSION

[18] The Tribunal allows the appeal.

Pierre Lafontaine
Member, Appeal Division