



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. E. v. Canada Employment Insurance Commission*, 2017 SSTADEI 200

Tribunal File Number: AD-16-1193

BETWEEN:

R. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: May 15, 2017

REASONS AND DECISION

DECISION

[1] On consent, the appeal is allowed. The matter will be returned to the General Division for reconsideration.

INTRODUCTION

[2] Previously, a member of the General Division dismissed the Appellant's appeal. In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[3] This appeal was decided on the record.

THE LAW

[4] 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

[5] This appeal concerns whether or not the Appellant showed just cause for voluntarily leaving her employment.

[6] The Appellant argues, among other things, that the General Division member failed to consider that she had been sexually harassed at work and that she had no choice but to leave her employment.

[7] The Commission, having considered the file and the decision, now admits that the member erred as the Appellant has alleged. They agree that a new hearing must be ordered so that the Appellant's arguments can be addressed by a General Division member as required.

[8] Having considered the file, I find myself in agreement with the parties that the General Division member erred as alleged by not considering the Appellant's submissions. The member should have addressed the Appellant's argument regarding the alleged sexual harassment.

[9] To be clear, it was (and is) entirely open to the member to find after an examination of the evidence and submissions that the Appellant had not demonstrated just cause to voluntarily leave her employment. However, in coming to that conclusion the Appellant's arguments and evidence must be fully considered.

[10] I agree that a new hearing is required so that the parties can make their respective cases in full.

CONCLUSION

[11] For the above reasons and on consent, the appeal is allowed. The matter will be returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division