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

[TRANSLATION]

Citation: *A. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 242

Tribunal File Number: AD-17-389

BETWEEN:

A. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 19, 2017

Canada

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 12, 2017, the General Division concluded that the Appellant did not have just cause for voluntarily leaving his employment because it was not the only reasonable alternative given the circumstances. For this reason, he is disqualified from receiving any benefits pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] On May 10, 2017, the Appellant filed an application for leave to appeal before the Appeal Division. Leave to appeal was granted on May 17, 2017.

ISSUE

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

THE LAW

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), 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.

STANDARDS OF REVIEW

[6] The Appellant did not make any submissions regarding the applicable standard of review.

[7] The Respondent maintains that the Appeal Division does not have to defer to the General Division's conclusions regarding questions of law, regardless of whether the error appears on the face of the record. However, for questions of mixed fact and law and questions of fact, the Appeal Division must show deference to the General Division. It can only intervene if 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—*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, indicates 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

[12] The Appellant is appealing the General Division's decision on grounds *b*) and *c*) of subsection 58(1) of the DESD Act. He essentially claims that the General Division erred in its interpretation and application of subparagraph 29(*c*)(vi) of the Act, namely that the Applicant had just cause for leaving his employment because he had reasonable assurance of other employment in the immediate future, and he therefore had no reasonable alternative to leaving.

[13] The Appellant argues that the General Division imposed an excessively heavy burden on him when it indicated in its decision that he should have left his employment only when he had found another job that was equivalent in salary and that that would not have caused a situation of unemployment.

[14] The Respondent is of the view that the General Division imposed an excessively heavy burden on the Appellant and that there it erred in fact and in law. It submits that the General Division did not follow the teachings of the Federal Court of Appeal in *Canada (Attorney General) v. Lessard*, 2002 FCA 469. Finally, it claims that the General Division relied on unclear facts, namely whether the new employment was to represent more hours and last until the fall. It claims that the file should have been returned to the Commission so that this information could be validated with the employer.

[15] Upon reviewing the file and the General Division's decision, the Tribunal agrees with the parties' submissions to the effect that the General Division erred in its interpretation and application of subparagraph 29(*c*)(vi) of the Act, because it imposed an excessively heavy burden on the Appellant and it failed to respect the teachings of the Federal Court of Appeal in *Lessard*, *supra*, and in *Canada (Attorney General) v. Imran*, 2008 FCA 17, on the concept of "reasonable assurance of another employment."

CONCLUSION

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

[17] The Tribunal orders that the General Division’s decision dated April 12, 2017, be removed from the file.

Pierre Lafontaine

Member, Appeal Division