



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 245

Tribunal File Number: AD-16-1162

BETWEEN:

A. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: June 22, 2017

DATE OF DECISION: June 27, 2017

DECISION

[1] 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] A teleconference was held. The Appellant and the Commission each attended and made submissions.

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] The facts of this case are highly unusual.

[6] The Appellant argues, among other things, that the General Division member erred by finding (at paragraph 6 of his decision) that she had been employed by a certain

employer. The Appellant submits that she has in fact never heard of that employer, and that the General Division member obviously failed to consider the file closely.

[7] The Commission maintains their position that the initial Commission determination should be upheld. However, they agree that the General Division member's finding noted by the Appellant has no basis in the evidence. For this reason, they have no objection to a new hearing being held so that the natural justice rights of the Appellant can be fully respected.

[8] As I noted in my leave to appeal decision, it may well be that the General Division member, perhaps thinking of some other file, made a simple and innocent mistake in recording the name of the Appellant's employer. It is also possible, however, that the General Division member made this finding after considering an entirely separate evidentiary record.

[9] Either way, it is a basic legal principle that in coming to their decisions, Tribunal members must consider only the evidence before them. Unfortunately, in this instance I cannot say for certain that this has happened.

[10] I therefore find that a new hearing before the General Division must be held to safeguard the natural justice rights of the Appellant.

CONCLUSION

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

Mark Borer

Member, Appeal Division