



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 248

Tribunal File Number: AD-17-8

BETWEEN:

P. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: June 22, 2017

DATE OF DECISION: June 27, 2017

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On December 12, 2016, the Tribunal's General Division determined that it was appropriate to summarily dismiss the Appellant's appeal of the Respondent's reconsideration decision because there had been misconduct within the meaning of sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Appellant filed an appeal before the Appeal Division on December 23, 2016.

FORM OF HEARING

[4] The Tribunal determined that the hearing of this appeal would be held by teleconference for the following reasons:

- the complexity of the issue under appeal;
- the fact that the parties' credibility was not a key issue;
- the cost-effectiveness and expediency of the hearing choice; and
- the need to proceed as informally and as quickly as possible while complying with the rules of natural justice.

[5] The Appellant attended the hearing. The Respondent did not attend despite having received the notice of hearing.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the grounds of appeal as being limited to 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.

ISSUE

[7] The Tribunal must decide whether the General Division committed an error by summarily dismissing the Appellant's appeal.

SUBMISSIONS

[8] The Appellant's arguments in support of his appeal are as follows:

- He committed a traffic violation for which he served time.
- He asked his employer for leave without pay, which was denied. He then lost his case in arbitration.
- He filed an action against his union and his employer because he believed he had been poorly represented.
- He missed 13 days of work during his incarceration. He had never had any problem with his employer before.

- [9] The Respondent submits the following reasons against the Appellant's appeal:
- The General Division did not err in summarily dismissing the Appellant's appeal.
 - The General Division correctly exercised its jurisdiction; its decision is not tainted with an error in law, and it did not base its decision on an erroneous finding of fact that it had made in a perverse or capricious manner without regard for the material before it.
 - Given the facts in the case, the General Division's decision is reasonable.

STANDARDS OF REVIEW

[10] The parties made no submissions regarding the appropriate standard of review.

[11] 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.”

[12] 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.

[13] The Federal Court of Appeal concludes by emphasizing that, “Where 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.” - 5 -

[14] 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.

[15] As a result, unless the General Division failed to observe a principle of natural justice, committed an error 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 or its decision was unreasonable, the Tribunal must dismiss the appeal.

ANALYSIS

[16] The Respondent's initial decision pertains to the issue of misconduct under sections 29 and 30 of the Act. However, the Tribunal must first decide on the General Division's decision to summarily dismiss the Appellant's appeal.

[17] The Tribunal must in consider whether the General Division committed an error in law by summarily dismissing the appeal under subsection 53(1) of the DESD Act.

[18] As it was established in the Appeal Division's decisions, before summarily dismissing an appeal, the Tribunal must rule on the following issue:

- Does the appeal manifestly lack substance, and is it clearly bound to fail?

[19] For more precision, it must be determined whether the appeal manifestly lacks substance and whether it is clearly bound to fail, regardless of what evidence or arguments might be submitted at a hearing.

[20] The Appellant stopped reporting to work following his incarceration stemming from his arrest for driving under the influence of alcohol. His driver's licence was suspended at that time due to his drinking and driving. He was incarcerated for 13 days. He therefore could no longer report to work according to the established schedule: a breach of an implied or express duty in the employment contract, which constitutes misconduct within the meaning of the Act.

[21] According to the ample case law, whenever an employee, by their own actions that amount to misconduct, puts themselves in a situation where they are no longer able to perform their duties under the employment contract and, thus, loses their employment, they cannot force others to bear the burden of their unemployment—*Canada (Attorney General)*

v. Brissette, [1994] 1 FCR 684, 1993 CanLII 3020 (FCA); *Canada (Attorney General) v. Lavallée*, 2003 FCA 255, *Canada (Attorney General) v. Borden*, 2004 FCA 176.

[22] The Tribunal is of the opinion that that the General Division did not commit an error when it determined that that the Appellant's appeal manifestly lacked substance and that it was clearly bound to fail.

CONCLUSION

[23] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division