



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. M. v. Canada Employment Insurance Commission*, 2017 SSTADEI 274

Tribunal File Number: AD-17-309

BETWEEN:

L. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: July 18, 2017

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] The facts of this case are highly unusual.

[6] In my leave to appeal decision, I noted that the General Division member wrongly stated the test for showing just cause for voluntary leaving one's employment as whether or not the Appellant had exhausted "all alternatives" instead of "all reasonable alternatives." I further noted that at some points in her decision the member did use the correct test, and

that it was therefore unclear to me whether or not this was a simple typographical error or a true error of law.

[7] The Commission, having reviewed the matter, admits that they are also unable to say with any certainty that the member applied the correct legal test. For this reason, they concede that a new hearing should be held so that a fully transparent and intelligible decision can be rendered.

[8] It is a basic legal principle that in coming to their decisions, Tribunal members must consider and apply the correct law. Unfortunately, in this instance, I cannot say for certain that this has happened.

[9] It may well be that the General Division member made a simple and innocent mistake in omitting the word “reasonable” at key points in her decision. It is also possible, however, that the General Division member failed to apply the correct law to the facts at hand.

[10] Noting the agreement of the Commission, I find that a new hearing before the General Division must be held to safeguard the natural justice rights of the Appellant and ensure that the correct law is applied.

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