



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. S. C.*, 2017 SSTADEI 300

Tribunal File Number: AD-16-1220

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

S. C.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: July 11, 2017

DATE OF DECISION: August 18, 2017

DECISION

[1] The appeal is allowed. The matter is returned to the General Division for reconsideration in accordance with these reasons.

INTRODUCTION

[2] Previously, a member of the General Division member allowed the Respondent's appeal.

[3] In due course, the Commission filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] A teleconference hearing was held. The Commission attended and made submissions, but the Respondent did not. Instead, the Respondent wrote to the Tribunal saying that she was not "interested in pursuing this matter any further." As she referenced the hearing date, I was satisfied that she was aware of the hearing and therefore I proceeded in her absence.

THE LAW

[5] 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 [or the Board] failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division [or the Board] erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division [or the Board] 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

[6] In this case, the General Division found that the Respondent was in a common-law relationship and, in following her spouse to a new city, had no reasonable alternative to leaving her employment and thereby established just cause within the meaning of the *Employment Insurance Act* (Act).

[7] The Commission argues that, according to the Act and the jurisprudence of the Courts, the Respondent was not in a common-law relationship and that the member erred in law and fact by finding to the contrary. The Commission also submits that although the Respondent may have made a good personal decision to leave her job, she had reasonable alternatives to doing so.

[8] In his decision, the member examined the relationship between the Respondent and her partner and determined that they were in a common-law relationship. Although he noted that subsection 2(1) of the Act requires that the couple be “cohabiting,” he did not explain why he found that the Respondent and her partner met that requirement. Nor did he consider or apply *Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65, a decision of the Supreme Court of Canada that further explains how to establish whether or not a common-law relationship exists.

[9] The member then went on to find (at paragraph 35) that the Respondent had no reasonable alternative to leaving her employment because:

First: During 2015 [the Respondent] and her common-law partner travelled back-and-forth from Edmonton and Sudbury twenty times.
Second: The economic costs of travelling back-and-forth between Edmonton and Sudbury had become economically prohibitive to [the Respondent].

[10] On this basis, he allowed the appeal.

[11] Unfortunately, in doing so the member failed to properly consider and apply the law and the jurisprudence of the Court in determining whether or not the Respondent and her partner met the definition of a common-law couple. The member also failed to follow the jurisprudence of the Court (of which *Canada (Attorney General) v. Graham*, 2011 FCA 311,

is but one example) when he determined that financial motives can establish just cause for leaving one's employment.

[12] I therefore have no hesitation in allowing the Commission's appeal.

[13] Normally, this would result in the matter being returned to the General Division for a new hearing. In this case, however, I note the Respondent's submission that she is not "interested in pursuing this matter any further."

[14] At my request, Tribunal staff attempted to contact the Respondent to determine exactly what was meant by this. While it is possible that she was merely attempting to concede to this present appeal or to indicate that she would not be attending the Appeal Division hearing, it is also possible that she was attempting to withdraw her initial appeal to the General Division which began this process.

[15] For this reason, if the Respondent does not make submissions to the General Division or appear at the General Division hearing, I direct that the General Division dismiss her appeal as abandoned unless it is determined that the interests of justice require otherwise.

CONCLUSION

[16] For the above reasons, the appeal is allowed. The matter is returned to the General Division for reconsideration in accordance with these reasons.

Mark Borer

Member, Appeal Division