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

Citation: *C. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 305

Tribunal File Number: AD-16-1033

BETWEEN:

C. 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: August 25, 2017

Canada

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] Previously, a General Division member dismissed the Appellant's appeal.

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

[4] A teleconference hearing was held. The Appellant and the Commission each attended and made submissions. The Appellant's submissions were made by way of counsel.

THE LAW

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

[6] This appeal concerns whether or not the Appellant (a teacher) had just cause within the meaning of the *Employment Insurance Act* (Act) to voluntarily leave her employment.

[7] The Appellant alleges that, following a certain incident, she was subject to threats and harassment by her school principal. The Appellant stated both to me and the General Division member how, among other things, she had been bullied and threatened with referral to a teaching disciplinary body and argues that, because of this, she had shown just cause to leave her employment. She asks that her appeal be allowed.

[8] The Commission supports the General Division member's decision. They say that the member properly canvassed the case law and the evidence before coming to her conclusion, and that there is no basis upon which I could intervene. They ask that the appeal be dismissed.

[9] As a preliminary matter, the Appellant presented a document stating that the British Columbia Commissioner for Teacher Regulation (BCCTR) determined that it was "not in the public interest to take further action in respect of" certain allegations made by the Appellant's Employer. This document was not available at the time of the General Division hearing, and it was argued that if the General Division member had seen it, it would have changed her decision.

[10] Although the Commission agrees that there are circumstances where new documents may be introduced into evidence, they submit that the document presented should be rejected because it would not have changed anything even if it had been before the General Division member.

[11] Generally, the Appeal Division does not admit new documents into evidence because this is not an appeal *de novo*. Applying the criteria set out in *Canada (Attorney General) v. Chan*, [1994] F.C.J. no 1916, while I agree that the document did not exist at the time of the General Division hearing, I do not agree with the Appellant that it would have been decisive of the issue put to the General Division member.

[12] I come to this conclusion because this document does not provide any new information regarding the underlying facts that the member was called upon to evaluate. The fact that a complaint regarding the Appellant was not pursued by the BCCTR for public interest reasons is not of any real assistance in determining whether or not the Appellant's

employment situation was so bad as to establish that she had no reasonable alternative to voluntarily leaving her employment. I therefore decline to add this document to the record.

[13] In her decision, the General Division member correctly stated the relevant law. She then examined the evidence and found (at paragraph 41) that there was insufficient evidence to establish that the work environment was hostile, threatening or genuinely intolerable. Instead, the member found that the Employer was simply carrying out disciplinary actions within the scope of his management authority. Ultimately, the member found that the Appellant had reasonable alternatives to leaving her employment, and dismissed the Appellant's appeal.

[14] I found counsel for the Appellant to be articulate and persuasive and I am grateful for his able submissions. But as correctly pointed out by the Commission, it is the General Division that is the primary trier of fact. The Appeal Division, by contrast, does not generally take evidence under oath and is usually reliant on the facts in the record. It is for this reason that factual findings made by the General Division are entitled to deference, especially where those findings rely upon testimony given at a hearing or on findings of credibility. This means that I cannot intervene just because I might have given more weight to a given piece of evidence than the General Division did or because I might have come to a different conclusion if I had been the trier of fact.

[15] In this case, the General Division member, after hearing the evidence presented by the parties and after taking into account the Appellant's submissions, simply did not believe that the situation faced by the Appellant was so intolerable that she had no reasonable alternative to leaving her employment and ruled accordingly. I note that although the member did not accept the Appellant's arguments, she did consider those arguments in coming to her conclusion.

[16] The Appellant disagrees with the General Division member's conclusions. But I am not convinced that the General Division member made any error within the meaning of subsection 58(1) of the DESDA.

[17] In my view, as evidenced by the decision and record, the member conducted a proper hearing, weighed the evidence, made findings of fact based upon that evidence, established the correct law, properly applied that law to the facts, and came to a conclusion that was intelligible and understandable.

[18] There is no reason for the Appeal Division to intervene.

CONCLUSION

[19] For the above reasons, the appeal is dismissed.

Mark Borer

Member, Appeal Division