



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 307

Tribunal File Number: AD-17-502

BETWEEN:

B. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: August 25, 2017

REASONS AND DECISION

DECISION

[1] The appeal is granted and the file is returned to the General Division (Employment Insurance Section) of the Social Security Tribunal of Canada (Tribunal) for a new hearing by a different member.

INTRODUCTION

[2] On June 23, 2017, the Tribunal's General Division determined that the Appellant had lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Appellant requested leave to appeal to the Appeal Division on July 10, 2017. Leave to appeal was granted on August 1, 2017.

ISSUE

[4] The Tribunal must decide whether the General Division erred when it concluded that the Appellant had lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the Act.

THE LAW

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal are 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.

ANALYSIS

[6] The Tribunal granted the Appellant leave to appeal on the basis that the General Division had possibly failed to observe a principle of natural justice when, in its decision, it had given more weight to the employer's evidence because of the Closed Circuit Television (CCTV) coverage in the building and the police investigation. However, neither the CCTV coverage nor the police investigation report was filed as evidence.

[7] The Respondent respectfully submits that the General Division member's finding that the intruder entered via the handicapped entrance button, and not by using an unregistered fob, is patently unreasonable. Giving more weight to the CCTV coverage and the police investigation (paragraph 23, AD1B-7) when they were not in evidence before the General Division to review impacts the fairness of the hearing, which the Respondent contends constitutes a breach of natural justice.

[8] It is the Respondent's position that the Appellant has grounds for appeal under subsection 58(1) of the DESD Act.

[9] For the above-mentioned reasons, the Tribunal agrees that the appeal must be granted.

CONCLUSION

[10] The appeal is allowed. The file will be returned to the Tribunal's General Division (Employment Insurance Section) for a new hearing by a different member.

[11] The Tribunal orders that the General Division decision dated June 23, 2017, be removed from the file.

Pierre Lafontaine
Member, Appeal Division