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

Citation: *T. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 326

Tribunal File Number: AD-16-1321

BETWEEN:

T. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shirley Netten

DATE OF DECISION: September 1, 2017

Canada

REASONS AND DECISION

[1] On April 3, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Appellant had been dismissed from employment for misconduct and that he was consequently disqualified from Employment Insurance benefits under s. 30(1) of the *Employment Insurance Act*.

[2] The Appellant applied for leave to appeal the General Division decision, and leave to appeal was granted by the Appeal Division of the Tribunal on January 26, 2017.

[3] According to s. 58(1) of the *Department of Employment and Social Development Act* (DESDA), the only grounds of appeal to the Appeal Division 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.

[4] The Appellant appeals on the basis that the General Division erred in fact and law by finding misconduct without consideration of a November 2015 settlement agreement which rescinded the Appellant's termination from employment. His representative further references a second settlement agreement signed in November 2016, after the issuance of the General Division decision.

[5] In submissions dated February 15, 2017, the Respondent requests that the appeal be allowed, and the matter referred back to the General Division, on the basis that the General Division ignored evidence of a settlement between the Appellant and his employer regarding the reason for his termination, and also on the basis of new evidence of a further, similar settlement.

[6] I note that the existence of new evidence is not an independent ground of appeal under the DESDA. Moreover, although the Appellant's submissions reference the rescind or amend process outlined in s. 66(1) of the DESDA, the Appellant has not applied to the General Division to rescind or amend its decision on the basis of new facts; rather, he has appealed to the Appeal Division. In any case, as set out below, this appeal is allowed on the basis of a failure to observe a principle of natural justice, pursuant to s. 58(1)(*a*) of the DESDA.

[7] Paragraph 16 of the General Division decision states as follows:

> At the hearing, the Appellant stated that he came to an agreement with his employer. He agreed to withdraw his grievance and they would issue a letter of recommendation that confirmed his employment. His dismissal and the reason for it, was not mentioned in this letter. […]

[8] The decision makes no further mention of the agreement with the employer. Yet, in his testimony before the General Division, the Appellant explained that he and his employer had signed an agreement to conclude the grievance of his dismissal (as distinct from the letter of recommendation). The Appellant (who was self-represented) stated multiple times, in different ways, that his employer had agreed to "take away" or "remove" the misconduct, and that the termination of his employment would instead be considered "amicable."

[9] The parties are now in agreement that this appeal should be allowed. I agree that the General Division erred by not citing or considering the uncontradicted oral evidence that the employer had recently rescinded the Appellant's dismissal for misconduct. While such an agreement is not determinative of the question of whether the Appellant lost his employment because of his misconduct (and consequently I have not found that the General Division made an erroneous finding of fact), the content of the agreement as outlined in testimony is nevertheless relevant evidence that must be considered and weighed by the trier of fact (see, for example, *Canada (Attorney General) v. Courchene*, 2007 FCA 183). It is a principle of natural justice that a decision-maker must consider all of the relevant evidence when reaching a decision, and I find that the General Division failed to observe this principle when it ignored relevant evidence with respect to the reason for the Appellant's dismissal.

[10] As such, the appeal is allowed. Pursuant to s. 59(1) of the DESDA, the matter is referred back to the General Division for reconsideration. I emphasize, for the Appellant's benefit, that it will be the General Division's task to determine whether he did or did not lose his employment because of misconduct, in consideration of the evidence before it and the submissions of the parties.

CONCLUSION

[11] Consistent with the positions of the parties and for the reasons set out above, the appeal is allowed. The matter is referred back to the General Division for redetermination of the Appellant's appeal, by a different member.

Shirley Netten
Member, Appeal Division