



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Z. W. v. Canada Employment Insurance Commission*, 2018 SST 196

Tribunal File Number: AD-17-654

BETWEEN:

Z. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: February 28, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant (Claimant) left his employment on February 13, 2016. The Commission initially considered his employment to have been terminated for misconduct but reconsidered its decision, finding instead that he had voluntarily left his employment without just cause. The Claimant has maintained that he did not quit his employment but that he was dismissed as a result of a disagreement with his manager.

[3] The Claimant appealed to the General Division of the Tribunal, which found that he had left his employment voluntarily and that he did not have just cause to do so. The Claimant sought leave to appeal to the Appeal Division and leave was granted on the basis that the General Division member based her rejection of the reason for separation stated in the final amended Record of Employment on a potentially irrelevant consideration.

[4] The appeal is allowed. The General Division's decision was based on its finding that the Claimant quit his employment. When it disregarded the statement that he was dismissed in his final Record of Employment (ROE), it did so based on the Member's personal view that employers have been known to amend ROEs in order to avoid responding to labour investigations. There was no evidence of such an investigation or of a concern about such an investigation in this case that would support her rationale for dismissing the reason for separation set out in the final amended ROE. Therefore, I find that the General Division decision was based on an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the evidence before it. The matter is remitted to the General Division for reconsideration.

ISSUE

[5] Did the General Division base its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the evidence before it when it preferred the reason for separation stated in the original ROE over the reason stated in the final amended ROE?

ANALYSIS

[6] The Claimant argues that the General Division failed to consider the evidence that he was dismissed and, in particular, failed to consider the reason for separation documented in his final ROE. The employer had sent the Claimant three Records of Employment for the same period and the same employment. The reason for the first amended Record of Employment relates to the inclusion of separation pay and is not significant to the decision. However, the final Record of Employment (the second amendment) revises the reason for separation from “Quit” to “Dismissal.”

[7] The change is significant in that it corroborates the Claimant’s testimony to the extent that the Claimant maintained he had been dismissed. The General Division decision is predicated on this finding.

[8] In preferring the reason for separation in the earlier ROE, the General Division stated that it does not find the final ROE persuasive because, “[e]mployers have been known to amend ROEs in an effort to avoid the time and effort they would have to put into responding to an investigation by a provincial Labour Standards agency.”

[9] The Respondent submits that the General Division member relied on her own personal view to discount the validity of the reason for issuing the final ROE, and noted that her finding was not supported by the evidence. The Respondent agrees with the Claimant that he has grounds for appeal and it recommends that the case be returned to the General Division for a redetermination.

[10] I accept the Respondent’s submission and I agree that there was no evidence before the General Division on which it could find the employer in this case to have had the motive

imputed to it, and that the General Division’s preference of the earlier ROE’s statement that the Claimant quit was based on a fact not in evidence. This calls into question the General Division’s broader finding that the Claimant did, in fact, quit and it represents an error under s. 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act): 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 evidence before it.

CONCLUSION

[11] The appeal is allowed. The matter is remitted to the General Division for reconsideration per section 59 of the DESD Act.

Stephen Bergen
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	Z. W., Appellant Susan Prud’Homme, Representative for the Appellant