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

Citation: *E. W. Inc v. Canada Employment Insurance Commission*, 2018 SST 565

Tribunal File Number: AD-17-477

BETWEEN:

E. W. Inc

Appellant

and

Canada Employment Insurance Commission

Respondent

and

B. B.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 24, 2018

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal. The file is returned to the General Division for a new hearing.

OVERVIEW

[2] The Added Party, B. B. (Claimant), applied for Employment Insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission), initially informed the Claimant that EI benefits were denied since she had lost her employment because of her own misconduct. The employer had fired the Claimant because she had solicited its clients and used company supplies for her own benefit, refused to wear the company uniform, and smoked in the company vehicle. After reconsideration, the Commission informed the Claimant and the employer that the decision had been overturned. The employer, E. W. Inc, appealed to the Tribunal's General Division.

[3] The General Division found that, on the balance of probabilities, the Claimant did not lose her employment because of her own misconduct within the meaning of the *Employment Insurance Act* (Act), since there was no wilful behavior and there was no causal link between the alleged misconduct and the Claimant's loss of employment. The General Division concluded that the Claimant did not know that her behaviour would result in her dismissal.

[4] The employer was granted leave to appeal to the Appeal Division. The employer submits that the General Division erred in law by failing to consider the material before it. The employer argues that the General Division could not consider only the Claimant's evidence without considering the employer's evidence.

[5] The Tribunal must decide whether the General Division erred in fact or in law by considering only the Claimant's evidence and ignoring the employer's evidence.

[6] The Tribunal allows the employer's appeal.

ISSUE

[7] Did the General Division err in fact or in law by considering only the Claimant's evidence and ignoring the employer's evidence?

ANALYSIS

Appeal Division's Mandate

[8] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to s. 58(1) of the *Department of Employment and Social Development Act* (DESDA), the Appeal Division's mandate is conferred to it by ss. 55 to 69 of that Act.[1]

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.[2]

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or 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, the Tribunal must dismiss the appeal.

Preliminary Issue

[11] The Tribunal proceeded with the appeal hearing in the absence of the Claimant and the Commission since it was satisfied that they had received the notice of hearing in accordance with s. 12 of the *Social Security Tribunal Regulations*.

[1] *Canada (A.G.) v. Jean*, 2015 FCA 242; *Maunder v. Canada (A.G.)*, 2015 FCA 274.
[2] *Ibid*.

Issue: Did the General Division err in fact or in law by considering only the Claimant's evidence and ignoring the employer's evidence?

[12] The employer puts forward that the General Division made its decision without regard for the material before it. It submits that it is a miscarriage of the law to ignore all of the impartial documentation and written testimonies sent to the General Division and then to write in the decision that no evidence was filed by the employer. It states that the General Division erred when it considered only the Claimant's evidence and not the employer's evidence.

[13] The Commission respectfully submits that the General Division dismissed the appeal based on erroneous findings of fact. The Commission submits that the employer has grounds for appeal under s. 58(1) of the DESDA and therefore respectfully requests that the case be returned to the General Division for a new hearing.

[14] In this case, the General Division had to decide whether the Claimant lost her employment due to her own misconduct within the meaning of the Act.

[15] The General Division's role is to examine the evidence presented by both parties in order to identify the relevant facts, namely, the facts that concern the particular dispute that it must decide, and to explain in writing its decision concerning these facts.

[16] The General Division must obviously justify its determinations. When it is faced with contradictory evidence, it cannot disregard it; it must consider it. If it decides that the evidence should be dismissed or assigned little or no weight, it must explain the reasons for this decision, failing which there is a risk that its decision will be marred by an error of law or be qualified as capricious.[3]

[17] In this case, the General Division ignored the employer's evidence. Without explaining why, the General Division set aside documents and statements from witnesses of the employer.

[18] The General Division found that the employer had not provided any evidence that the Claimant used its supplies to clean for a private client.[4] This conclusion is not supported by the evidence. The statement from T. D. indicates that she lived with the Claimant and that she knew

[3] *Bellefleur v. Canada (A.G.)*, 2008 FCA 13.
[4] Para. 52 of the General Division decision.

the Claimant cleaned for private clients and used the employer's company car and cleaning products.[5]

[19] The General Division also found that the Claimant was never given any verbal or written warnings throughout her employment and that therefore, she could not have known that her behaviour would result in her dismissal.[6] However, a document dated March 3, 2016, signed by the Claimant, shows that the Claimant was warned by the employer about smoking in the company car and how it was a breach of the employment contract.[7]

[20] The General Division also ignored evidence from numerous employees of the employer indicating that the Claimant was often seen not wearing her company uniform, and that it was a contractual obligation to wear the uniform prescribed by the employer.[8]

[21] Given the above-mentioned errors, the Tribunal is justified in intervening and returning this case to the General Division for a new hearing.

CONCLUSION

[22] The Tribunal allows the appeal. Considering the contradictory evidence and the issue of credibility to be determined, the file is returned to the General Division for a new hearing.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 15, 2018
METHOD OF PROCEEDING:	Teleconference

[5] GD2-21.
[6] Para. 57 of the General Division decision.
[7] GD3-60; GD3-23, clause X.
[8] GD2-20 to GD2-27; GD3-23, clause 6.

APPEARANCES:	E. W., for the Appellant E. C., Representative for the Appellant