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

Citation: *E. E. v Canada Employment Insurance Commission*, 2019 SST 395

Tribunal File Number: AD-19-167

BETWEEN:

E. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 1, 2019

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, E. E. (Claimant), applied for regular Employment Insurance benefits and established a claim. The Respondent, the Canada Employment Insurance Commission (Commission) investigated the Claimant's reason for separation from employment and determined she was dismissed from her job for insubordination and breach of confidentiality. The Commission imposed a disqualification on her claim because she lost her job due to her own misconduct. The Claimant disputed the Commission's decision because her employer had amended her Record of Employment (ROE) from "dismissal" to "without cause termination." The Commission maintained its decision, and the Claimant appealed to the General Division of the Tribunal.

[3] The General Division found that the Claimant's conduct of sending an email with the employer's information to third parties was willful, deliberate, and reckless. The General Division further found that these actions irreparably harmed her employment relationship with her employer and that the Claimant ought to have known she could lose her job for this conduct. The General Division concluded that the Claimant's conduct was misconduct within the meaning of section 30 of the *Employment Insurance Act* (EI Act).

[4] The Claimant was granted leave to appeal to the Appeal Division. The Claimant puts forward that the General Division erred in its interpretation of federal case law on the issue of misconduct.

[5] The Tribunal must decide whether the General Division erred in law in its interpretation of the legal test for misconduct.

[6] The Tribunal dismisses the appeal.

ISSUE

Issue: Did the General Division erred in law in its interpretation of the legal test for misconduct?

ANALYSIS

Appeal Division's mandate

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

[8] 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]

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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.

Issue: Did the General Division erred in law in its interpretation of the legal test for misconduct?

[10] The General Division had to decide if the Claimant had lost her employment because of her own misconduct in accordance with ss. 29 and 30 of the EI Act.

[11] The General Division found that the Claimant's conduct of sending an email with the employer's information to third parties was willful, deliberate, and reckless. The General Division further found that these actions irreparably harmed her employment relationship with her employer and that the Claimant ought to have known she could lose

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[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.
[2] *Idem*.

her job for this conduct. The General Division concluded that the Claimant's conduct was misconduct within the meaning of section 30 of the EI Act.

[12] The undisputed evidence demonstrates that the Claimant forwarded an email from her new supervisor to her former supervisor, who had been recently terminated by the employer. A document was attached to said email containing information from the employer. In doing so, the Claimant wanted to verify with her former supervisor whether she was being over sensitive about the email that she considered being harassment. However, she forwarded the email by error to the work email of her former supervisor instead of her personal email. Her new supervisor then intercepted the email. Following this incident, she was dismissed for insubordination and breach of confidentiality.

[13] The Appellant pleads that she forwarded the email by mistake to the work email of her former supervisor instead of her personal email and that therefore she did not act intentionally or wilfully. She argues that no harm was done to the employer. The Claimant submits that she did not lose her job because of her misconduct pursuant to sections 29 and 30 of the EI Act.

[14] The Tribunal is of the view that the fact that the email was sent by mistake to the work email of her former supervisor does not change the General Division's determination that the Claimant attempted to forward the email of her new supervisor to her previous supervisor that had been terminated by the employer. It is clear that the Claimant's actions irreparably harmed her employment relationship with her employer and that the Claimant ought to have known she could lose her job for this conduct.

[15] The Tribunal finds that the Claimant, at the very least, showed carelessness or was negligent to the point that one could say that he wilfully disregarded the affects her actions would have on the duty owed to the employer when she attempted to forward the email to her former supervisor.

[16] The Appellant further pleads that the Employer amended her ROE from "dismissal" to "without cause termination." The Claimant argues that the Commission and the General Division should not interfere with the employer's position.

[17] The Tribunal reiterates that it is for the General Division to assess the evidence and come to a decision under the EI Act. It is not bound by how the employer and employee or a third party might characterize the grounds on which an employment has been terminated.[3]

[18] As stated during the appeal hearing, the Tribunal does not have the authority to retry a case or to substitute his or her discretion for that of the General Division. The Tribunal's jurisdiction is limited by subsection 58(1) of the DESD Act. Unless the General Division failed to observe a principle of natural justice, erred in law, 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 or its decision was unreasonable, the Tribunal must dismiss the appeal.

[19] The Tribunal finds that there is no evidence to support the grounds of appeal invoked by the Appellant or any other possible ground of appeal. The decision of the General Division is supported by the facts and complies with the law and the decided cases.

[20] For the above-mentioned reasons, the appeal is dismissed.

CONCLUSION

[21] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	April 25, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. E., Appellant

[3] *Canada (Attorney General) v Boulton*, A-45-96.

	Isabelle Thiffault, representative of the Respondent