[TRANSLATION]

Citation: *S. M. v Canada Employment Insurance Commission*, 2019 SST 494

Tribunal File Number: AD-18-449

BETWEEN:

S. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 17, 2019

ISSUES

[7] Did the General Division make its decision without considering the material before it?

[8] Did the General Division make an error by not considering the application of sections 29(c)(x) and (xiii) of the EI Act, despite the evidence before it?

ANALYSIS

The Appeal Division's Mandate

[9] The Federal Court of Appeal has determined that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).[1]

[10] 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.

[11] Therefore, unless the General Division failed to observe a principle of natural justice, made an error 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.

ISSUES

Did the General Division make its decision without considering the material before it?

Did the General Division make an error by not considering the application of sections 29(c)(x) and (xiii) of the EI Act, despite the evidence before it?

[12] The Claimant's appeal is without merit.

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

[13] The Claimant argued on appeal that he did not leave his employment voluntarily. He submitted that the General Division made its decision without considering the material before it. The Claimant maintained that, contrary to the General Division's findings, his employer dismissed him. He also maintained that the General Division did not consider the evidence that he was made to leave his employment and that there was a hostile relationship with his supervisor.

[14] The issue under appeal before the General Division was whether the Claimant had voluntarily left his employment without just cause under sections 29 and 30 of the EI Act.

[15] It appears clear to the Tribunal that the Claimant is the one who ended his employment. The employer asked him to provide the best possible performance by working full weeks. The Claimant chose instead to leave his employment.

[16] The General Division assigned more weight to the Claimant's and the employer's initial statements.

[17] The employer initially stated that the Claimant returned to work on August 8, 2016, and that he missed days during the first week after his return. The employer also informed him that he was missing work too often and that he needed to provide the best possible performance. The Claimant finally called to tender his resignation, indicating that he was not capable of working his 40 hours each week.[2]

[18] The Claimant confirmed that, following the death of his father, he sometimes arrived a few minutes late or missed days. He stated that he spent his construction holiday in his home and that he did not want to see anyone. He needed to grieve. The Claimant stated that his construction holiday was not enough for him to work through his grief. The foreman met him when he returned and told him that it was not working anymore and that he had to work his full week. The Claimant collected his things and stopped going to work.[3]

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[2] GD3-18 and GD3-26.
[3] GD3-34.

[19] The General Division found that, if the Claimant had had health problems, he could have consulted a doctor so that he could take sick leave instead of leaving his employment. Based on the evidence, it found that the Claimant had not demonstrated that he had no reasonable alternative to leaving.

[20] The Tribunal is of the view that that the General Division did not make an error when it found, based on the evidence before it, that the Claimant had reasonable alternatives to leaving his employment when he did.

[21] Furthermore, the evidence does not support the Claimant's assertion that his employer made him leave his employment or that he had a hostile relationship with his employer that justified his voluntary leaving.

CONCLUSION

[22] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 9, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. L., Representative for the Appellant S. M. , Appellant Manon Richardson, Representative for the Respondent