



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. L. v Canada Employment Insurance Commission*, 2019 SST 545

Tribunal File Number: AD-19-286

BETWEEN:

L. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: June 4, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed and is referred back to the General Division for reconsideration.

OVERVIEW

[2] L. L. (Claimant) left his employment, giving two reasons for doing so, that he would return to school, and issues with work hours and conditions. He applied for Employment Insurance benefits. The Canada Employment Insurance Commission refused the application because it decided that the Claimant had voluntarily left his employment without just cause.

[3] The Claimant appealed this decision to the Tribunal's General Division. The General Division dismissed the appeal. Leave to appeal this decision to the Tribunal's Appeal Division was granted on the basis that the General Division may have misapprehended the facts. The appeal is allowed because the General Division misapprehended the facts. The appeal is referred back to the General Division for reconsideration.

PRELIMINARY MATTER

[4] This appeal was decided on the basis of the documents filed with the Tribunal after considering the following:

- a) The parties have filed submissions that outline their legal positions on the issues to be decided;
- b) The parties have both requested that the appeal be allowed, and the appeal referred back to the General Division; and
- c) The *Social Security Tribunal Regulations* require that proceedings be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.

ISSUES

[5] Did the General Division misapprehend the facts, resulting in a decision that was based on an erroneous finding of fact made perversely, capriciously or without regard for the material that was before it?

[6] Did the General Division fail to observe a principle of natural justice because it had prejudged the matter, or because it misapprehended the evidence?

ANALYSIS

[7] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider. They are that 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 made in a perverse or capricious manner or without regard for the material before it.¹ Therefore, for the appeal to be allowed, the Claimant must demonstrate that the General Division made at least one of these errors. His grounds of appeal are considered below.

Issue 1: Erroneous finding of fact

[8] One ground of appeal under the DESD Act is that the General Division based its decision on an erroneous finding of fact. To succeed on this basis, the Claimant must prove three things: that a finding of fact was erroneous (in error); that the finding was made perversely, capriciously, or without regard for the material that was before the General Division; and that the decision was based on this finding of fact.²

[9] The Claimant wrote in his application for Employment Insurance that he worked for the employer from January 2018 until November 2018, on the shop floor of a factory. He stated that he left work because he wished to attend school, that the Employer would not change his hours to accommodate this, and that the work hours were causing him stress.³ However, the General

¹ DESD Act s. 58(1)

² *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

³ GD3-10

Division decision states that the Claimant worked for approximately 25 years for the same employer and stated that he was retiring when he left work.⁴ This finding of fact is at odds with the evidence in the written record. It is perverse. It is not clear whether the General Division based its decision on this erroneous finding of fact. However, since there was no evidence to support this finding of fact, it is not clear whether the General Division understood the evidence that was before it.

Issue 2: Natural justice

[10] Another ground of appeal under the DESD Act is that the General Division failed to observe the principles of natural justice. These principles are procedural. They are concerned with ensuring that parties to an appeal have the opportunity to present their case to the Tribunal, to know and answer the legal case against them, and to have a decision made by an independent decision maker based on the law and the facts.

[11] The Claimant argues that the General Division failed to observe these principles because it misinterpreted his words, accused him of lying about some of the information, and was not willing to “give [him] a fair trial from the get go”. The Claimant does not provide any examples of how his words were misinterpreted, or what he was accused of lying about. However, I am not convinced that the General Division made its decision based on the law and the correct facts. The facts set out in the decision’s overview are at odds with the evidence that was before the General Division. The decision is not clear about what weight, if any, it gave to these incorrect facts. Therefore, I am satisfied that the General Division failed to observe a principle of natural justice.

[12] The appeal is allowed on this basis.

REMEDY

[13] The DESD Act sets out what remedy the Appeal Division can give, including making the decision that the General Division should have made, and referring the matter back to the General Division for reconsideration. Both parties have requested that I refer the matter back to the General Division for reconsideration. This is the appropriate remedy. The record may be

⁴ General Division decision at para. 2

incomplete since the Claimant argues that his evidence was misinterpreted. He should have a full opportunity to present his case to the Tribunal.

CONCLUSION

[14] The appeal is allowed. The matter is referred back to the General Division for reconsideration.

[15] To avoid any possibility of an apprehension of bias, the matter should be reconsidered by a different General Division member.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	L. L., Appellant Angele Fricker, Representative for the Respondent