



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. E. v Canada Employment Insurance Commission*, 2019 SST 673

Tribunal File Number: AD-19-264

BETWEEN:

R. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: July 26, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, R. E. (Claimant), worked as a driver from April to December 2016, when his employer dismissed him from his job. In the Record of Employment, the employer stated that the Claimant had a DUI (driving under the influence) and that he was unable to drive (because he did not hold a valid driver's licence).¹ The Claimant applied for Employment Insurance regular benefits. He told the Commission that he had not worked since he applied for benefits earlier that year, so the Commission was unaware that the Claimant had been working from April to December 2016, or that he was dismissed from this employment for misconduct. The Commission paid him benefits.

[3] After re-examining his claim, the Canada Employment Insurance Commission (Commission) learned that the Claimant had been working and that he had been dismissed for misconduct from his job. The Commission decided that the Claimant was disqualified from receiving any benefits starting December 5, 2016, because of his misconduct. On top of that, the Commission found that the Claimant had made false representations, so it decided that he had to pay a penalty, and because the penalty was more than \$5,000, it also gave him a notice of violation.² The Claimant ended up with an overpayment, a penalty and a violation. This meant that he would need more insurable hours to qualify for any benefits in future. The Commission did not change its mind when it reconsidered its decision.³

[4] The Claimant appealed the reconsideration decision to the General Division, which dismissed his appeal. The General Division dismissed the appeal because it found that the Claimant had knowingly made false or misleading statements to the Commission and that the

¹ See Record of Employment, dated December 19, 2016, at GD3-60.

² See Commission's letter dated September 20, 2018, at GD3-72 to 74.

³ See Commission's reconsideration decision dated November 15, 2018, at GD3-87 to GD3-88.

Commission had properly exercised its discretion when it assessed a penalty and notice of violation.

[5] The Claimant is now appealing the General Division's decision. Although he has not clearly described any grounds of appeal, I understand that he is questioning whether the General Division addressed the issue of misconduct. In other words, he is questioning whether the General Division limited its jurisdiction when it examined only the penalty and violation issues.

[6] Although the Social Security Tribunal served the Claimant with a copy of the Notice of Hearing, the Claimant did not appear for the teleconference hearing.⁴ The Social Security Tribunal attempted to contact the Claimant following the hearing of this appeal, on July 19, 2019,

[7] I am dismissing the appeal because there is insufficient evidence that the Claimant sought to appeal the misconduct issue and because I do not see that there were any errors under subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA).

ISSUES

[8] Did the General Division refuse to exercise its jurisdiction by failing to consider whether there was misconduct?

[9] Did the General Division err in law or base its decision on any erroneous findings of fact that it made in a perverse or capricious manner or without regard for the material before it?

GROUND OF APPEAL

[10] The only three grounds of appeal under subsection 58(1) of the DESDA are:

⁴ Under section 19 of the *Social Security Tribunal Regulations*, a document is deemed to have been communicated to a party if sent by registered mail, on the date recorded on the acknowledgment of receipt. The Social Security Tribunal delivered the Notice of Hearing to the Claimant by Expresspost (registered mail) on June 5, 2019. Ron Davis acknowledged receipt of the document on behalf of the Claimant. The Tribunal attempted to contact the Claimant on July 19, 2019, following the hearing of this appeal, to verify whether he had intended on attending the hearing, but the Tribunal did not receive any response from him.

- i. the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- ii. the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- iii. 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 material before it.

ANALYSIS

(a) Did the General Division fail to exercise its jurisdiction by failing to consider whether there was misconduct?

[11] The General Division did not address the issue of whether there was misconduct. It focused on the issues involving the penalty and violation by looking at whether the Claimant had made a false and misleading statement, and whether the Commission had properly exercised its discretion when it applied a penalty and gave a notice of violation.

[12] As I indicated in my leave to appeal decision, the Claimant noted in his request for reconsideration⁵ that he had filed a record of employment in which his employer said the Claimant had left his employment because of “K-Other.” The employer specified on the record of employment that the Claimant had a DUI and because of this DUI, he could not meet the job requirements of a driver. For this reason, the employer dismissed him from his employment.

[13] In his notice of appeal to the General Division, the Claimant again wrote that he had received a DUI and could not drive anymore. He wrote, “Then sometime later they revoked it after I was paid because it was believed that I opened an existing claim and didn’t inform them properly of my dismissal.”⁶

⁵ See Request for Reconsideration at GD3-75.

⁶ See Notice of Appeal – Employment Insurance – General Division, at GD2-3.

[14] It is not entirely clear from his notice of appeal why or on what basis the Claimant appealed the Commission's reconsideration decision to the General Division. At the time of my leave to appeal decision, I questioned whether the Claimant was challenging whether there was misconduct on his part. I was prepared to accept that there could be an argument that the General Division had refused to exercise its jurisdiction by failing to address the issue of misconduct. However, the Claimant has not provided any submissions on this issue and has not pursued the potential argument further. In fact, he appears to acknowledge that he had a DUI and that he could not meet his job requirements. And, as the Commission notes, in a telephone call on November 13, 2018, the Claimant said that he was requesting a reconsideration for the penalty.⁷ The Claimant did not mention or discuss the conduct that led to his dismissal from his employment.

[15] The Claimant has not convinced me that he appealed the issue of misconduct to the General Division, or that he sought reconsideration to the Commission on the issue in the first place. For this reason, I find that the General Division properly acted within its scope of jurisdiction and that it did not fail to consider the issue of misconduct.

False representations

[16] If anything, the Claimant argues that both the Commission and the General Division erred in finding that he had made a false representation regarding his past employment. When he filed his application on December 21, 2016, he said that he had not worked since his last application for benefits.⁸ The Claimant denies that he had knowingly misrepresented this. After all, the record of employment clearly shows that he worked as a driver from April to December 2016.

[17] The General Division fully addressed this issue. The General Division gave the Claimant a chance to prove that he had not knowingly made the false statement that he had not worked since his last application. The Claimant relied on the record of employment to show that he was fully open about his work history, but, as the General Division noted, the employer—not the Claimant—produced the record of employment. The Claimant himself did not disclose the fact

⁷ See Supplementary Record of Claim dated November 13, 2018, at GD3-81.

⁸ Application, at GD3-8.

that he had been working from April to December 2016, or that he had been dismissed from this employment.

[18] The Claimant has not suggested that the General Division erred in law or that it based its decision on an erroneous finding of fact. Essentially, he is trying to re-argue his case and have me reassess and reevaluate the evidence, but that falls outside my authority. I am limited to examining whether the General Division erred under subsection 58(1) of the DESDA.

[19] The Claimant argues that it should have been irrelevant whether he had any past employment since his last claim in January 2016. He argues that even if he gave a false statement, it should have no effect on his claim for benefits after December 2016 because he did not work after December 2016.

[20] However, whether the Claimant worked again after January 2016 was important. For instance, if an employer dismissed him from any employment after January 2016 because of misconduct, the misconduct would have disqualified the Claimant from receiving any Employment Insurance benefits. For this reason, it was vital for the Claimant to provide accurate information to the Commission.

Penalty and violation

[21] The Commission argues that the General Division properly applied the law to the facts and that it did not misconstrue or overlook any important facts. The Commission also argues that the General Division conducted a fair hearing and that there was nothing in its decision to suggest that it was biased against the Claimant in any way. In this regard, I note that the Claimant is not suggesting that the General Division erred in law, that it based its decision on any erroneous findings of fact on either of these two issues, or that it failed to observe a principle of natural justice. He is also not suggesting that the General Division missed looking at any mitigating factors when it assessed the amount of the penalty and issued a notice of violation.

[22] I have reviewed the evidence that was before the General Division and agree with the Commission. The General Division properly set out the law regarding the imposition of any penalties and issuing of violations. It properly applied the law to the facts. Its findings were reasonable and consistent with the evidence. It did not overlook or mischaracterize any of the

evidence. It also afforded the Claimant a fair hearing. I note in particular that it gave the Claimant a chance to show that he had not knowingly made a false statement and that he had a good explanation for it.

CONCLUSION

[23] For the above reasons, I am dismissing the appeal.

Janet Lew
Member, Appeal Division

HEARD ON:	July 15, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. E., Appellant (non appearance) S. Prud'Homme, Representative for the Respondent