



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. C. v Canada Employment Insurance Commission*, 2020 SST 241

Tribunal File Number: AD-19-757

BETWEEN:

D. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 16, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal. The file returns to the General Division for reconsideration.

OVERVIEW

[2] The Appellant, D. C. (Claimant), made an initial claim for employment insurance benefits. The Respondent, the Canada Insurance Commission of Canada (Commission), determined that the Claimant was suspended because of his misconduct. The Commission found that the Claimant was suspended because he was found to have acted inappropriately toward his supervisor, damaged company property and refused to provide relief for breaks. The Claimant requested that the Commission reconsider its decision; however, it maintained its original decision. The Claimant appealed the Commission decision to the General Division.

[3] The General Division found that the Claimant was suspended because he broke company property and the employer felt his manner was inappropriate. Moreover, the General Division determined that the Claimant should have known that damaging company property, which was a violation of company policy, would lead to his dismissal considering prior violations. It concluded that the Claimant was suspended because of his own misconduct.

[4] The Appeal Division granted leave to appeal to the Claimant. He puts forward that the General Division rendered its decision without regard for the material before it.

[5] The Tribunal allows the Claimant's appeal.

ISSUE

[6] Did the General Division render its decision without regard for the material before it?

ANALYSIS

[7] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

- (a) the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

Did the General Division render its decision without regard for the material before it?

[8] The General Division had to decide whether the Claimant was suspended because of his own misconduct in accordance with sections 29 and 30 of the *Employment Insurance Act*.

[9] The Claimant puts forward that the General Division completely ignored his medical evidence in rendering its decision. He submits that this evidence demonstrates that his conduct was not willful, conscious and deliberate.¹

[10] The Commission acknowledges that the General Division did not discuss the medical information in its analysis, which is an error. However, it contends that based on the evidence, the medical information does not change the fact that the Claimant loss his employment due to his own misconduct

¹ GD6-2 to GD6-4.

[11] The General Division's role is to consider the evidence that both parties have presented to it, to determine the facts relevant to the particular legal issue before it and to articulate, in its written decision, its own independent decision with respect thereto.

[12] The General Division must clearly justify the conclusions it renders. When faced with contradictory evidence, the General Division cannot disregard it. It must consider it. If it decides that the evidence should be dismissed or assigned little or no weight at all, it must explain the reasons for its decision.²

[13] In this case, the General Division disregarded the Claimant's medical evidence in its analysis. The Claimant attempted to demonstrate that his conduct was not wilful since he suffers from attention deficit hyperactivity disorder (ADHD), a mental health disorder that can cause above-normal levels of hyperactive and impulsive behaviors. He submitted that the employer knew about his medical condition from the beginning of his employment.

[14] The Tribunal is of the opinion that the General Division erred in law in disregarding the Claimant's medical evidence without explanation and not considering in its analysis the question raised by the Claimant as to whether his conduct was willful, conscious and deliberate in view of his medical condition. The Tribunal also finds that the General Division rendered a decision without regard for the material before it.

[15] For the above-mentioned reasons, and since the Tribunal is convinced that the factual findings are incomplete, the Tribunal is justified to refer the matter to the General Division for reconsideration.

CONCLUSION

[16] The Tribunal allows the appeal. The file returns to the General Division for reconsideration.

Pierre Lafontaine
Member, Appeal Division

² *Bellefleur v Canada (Attorney General)*, 2008 FCA 13; *Parks v Canada (Attorney General)*, A-321-97.

HEARD ON:	March 12, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	D. C., Appellant