



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. K. v Canada Employment Insurance Commission*, 2020 SST 420

Tribunal File Number: AD-20-18

BETWEEN:

R. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: April 23, 2020

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Appellant, R. K. (Claimant), worked as a night auditor at a hotel in Winnipeg, Manitoba. He left his job to move with his family to Ontario for three reasons: he felt unsafe taking the bus to work at night; he received a hypothyroidism diagnosis and could not tolerate the cold; and, he needed to earn a higher hourly rate to support his family. The Commission disqualified the Claimant from receiving benefits because these reasons were personal and did not amount to just cause for voluntarily leaving his job.

[3] The Claimant asked the Commission to reconsider its decision but the Commission maintained its original decision. The Claimant appealed to the General Division of the Tribunal.

[4] The General Division found that the Claimant left his employment and that he had reasonable alternatives available to him, including moving closer to work.

[5] In support of his application for leave to appeal, the Claimant submits that the General Division failed to observe a principle of natural justice by not giving him the opportunity to reply to allegations against him.

[6] The Tribunal must decide whether the General Division failed to observe a principle of natural justice.

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

ISSUE

[8] **Did the General Division fail to observe a principle of natural justice?**

ANALYSIS

Appeal Division's mandate

[9] 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

[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.²

[11] 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.

Did the General Division fail to observe a principle of natural justice by not giving the Claimant the opportunity to reply to allegations against him?

[12] The Claimant submits that the General failed to observe a principle of natural justice by not giving him the opportunity to reply to allegations against him.

[13] The Commission agrees that the General Division erred under section 58(1) (a) of the DESD Act. It did not give the Claimant the opportunity to reply to the alternative that he could have moved closer to work to avoid travelling in the cold weather and to be safe. Therefore, the General Division erred when it based its decision on facts that were not present before it.

[14] The concept of “natural justice” includes the right of a claimant to a fair hearing. A fair hearing presupposes adequate notice of the hearing, the opportunity to be heard, the

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

² *Idem.*

right to know what is alleged against a party and the opportunity to answer those allegations.

[15] The Tribunal agrees that the General Division did not observe a principle of natural justice. Considering that the record is incomplete, the matter must go back 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

REPRESENTATIVES:	R. K., Self-represented Josée Lachance, representative of the Respondent
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