



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *X. H. v. Minister of Employment and Social Development*, 2016 SSTADIS 209

Tribunal File Number: AD-15-906

BETWEEN:

X. H.

Appellant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: June 15, 2016

REASONS AND DECISION

OVERVIEW

[1] This appeal is about whether the General Division deprived the Appellant of his right to a fair and unbiased hearing.

HISTORY OF PROCEEDINGS

[2] I granted leave to appeal on April 11, 2016, on three succinct grounds, and I also indicated that, depending upon any additional submissions from the Appellant, I was prepared to review the ground that the General Division might have failed to observe a principle of natural justice. After granting leave to appeal, the Appellant filed submissions in support of his appeal. He had reviewed the audio-recording of the appeal before the General Division and argued that he had been deprived of the opportunity to fairly present his case. He very helpfully provided timestamps of the audio-recordings where these alleged errors had occurred. The Respondent subsequently consented to the appeal being remitted to the General Division for a hearing *de novo* on the ground that the Appellant “may not have benefited from a full opportunity to present his case in accordance with the principles of procedural fairness and natural justice”.

NATURAL JUSTICE

[3] In submissions filed on May 13, 2016, the Appellant identified three areas where the General Division is alleged to have failed to observe a principle of natural justice, or where he was deprived of the opportunity to fairly present his case. These include time allocation issues, which resulted in interruptions from the General Division member, who was mindful of time limitations. For instance, starting at approximately 5:13 of the audio-recording, the Appellant began to review the history of his back injury, as he felt that the hearing file did not adequately describe his back injury. He also described the ringing in his ears and dizziness, and also noted that he developed a hernia. The Appellant alleges that the General Division member interrupted him as he explained his injuries and

limitations. On this point, the General Division member indicated that she was aware of the Appellant's hernia but that, as it had arisen after the end of the Appellant's minimum qualifying period, she considered that this information was not relevant.

[4] Finally, the Appellant also alleges that there were two "very critical translation errors". First, there was a question from the General Division regarding the Appellant's "impairments", which the translator allegedly translated into a question about the Appellant's "job". Secondly, instead of asking whether the Appellant had sought counselling, the interpreter allegedly asked whether the Appellant's physician had prescribed Penicillin to him. The Appellant's response to this latter question was that "he can't remember", so it would not have alerted the General Division to any interpretation issues. The Appellant suggests that these errors in interpretation may have detrimentally impacted the outcome of the appeal before the General Division.

[5] The Respondent at this juncture has not fully addressed all of the grounds upon which leave to appeal had been granted, but preliminarily submits that the General Division owed the Appellant a duty of fairness and was obligated to consider the principles of natural justice, including his right to be heard, when conducting its proceedings. As a party to the appeal whose interests were directly affected by the proceedings, the Respondent submits that the Appellant had the right to know the case to be met and to have a full opportunity to present his case. The Respondent indicates that it is unclear whether the Appellant received that opportunity in this case, given the allegations about the quality of the interpretation.

[6] The Respondent does not take any position on the timeliness at which the Appellant has raised these allegations about the quality of the interpretation, because the Appellant alleges that he does not have a strong command of English, and if so, he would not be expected to ascertain any errors as they arose.

[7] The Respondent also does not take any position on the veracity of the Appellant's claims regarding any inconsistencies in the interpretation, but given the circumstances of this case, requests that the Appeal Division remit the matter to a different member of the General Division for a hearing *de novo*, with instructions regarding interpretation.

DISPOSITION

[8] Ordinarily I would require that an appellant substantiate his allegations about the quality of the interpretation to prove that there was a breach of the principles of natural justice. However, in light of the Respondent's position on this appeal, I find that unnecessary and accordingly, I make no findings as to whether there are any actual inconsistencies or errors in the interpretation. I am nonetheless prepared to allow the appeal, given the Respondent's position on this matter.

CONCLUSION

[9] The appeal is allowed and the matter remitted to a different member of the General Division for a hearing *de novo*, with instructions that it arrange for a different interpreter, one who is at least accredited, but preferably certified, to provide Mandarin interpretation and translation.

Janet Lew

Member, Appeal Division