



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *WW v Minister of Employment and Social Development*, 2021 SST 18

Tribunal File Number: AD-20-812

BETWEEN:

**W. W.**

Appellant  
(Claimant)

and

**Minister of Employment and Social Development**

Respondent  
(Minister)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Neil Nawaz

DATE OF DECISION: January 25, 2021

## DECISION AND REASONS

### DECISION

[1] The appeal is allowed.

### OVERVIEW

[2] This case is about documents that allegedly went missing in transit.

[3] The Claimant is a 47-year-old former pharmacist's assistant and customer service representative who suffers from Crohn's disease. She stopped working in January 2018 because of increasing intestinal pain, among other symptoms.

[4] The following month, the Claimant applied for a Canada Pension Plan disability pension. The Minister refused the application, because, in its view, the Claimant had not shown that she was regularly incapable of pursuing a substantially gainful occupation.<sup>1</sup>

[5] The Claimant appealed the Minister's refusal to the Social Security Tribunal's General Division. It dismissed the appeal after finding insufficient evidence of a severe and prolonged disability.

[6] The Claimant is now requesting leave to appeal from the Tribunal's Appeal Division. She alleges that the General Division broke a promise to consider additional medical documents that she thought were important to her case.

### BACKGROUND

[7] At the start of the General Division hearing, held by teleconference on September 10, 2020, the Claimant asked the presiding member whether it was too late to submit additional documents.<sup>2</sup> She said that she had recent test results and other medical information that she thought would help the member decide her case. Then there was this exchange:<sup>3</sup>

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<sup>1</sup> The Minister determined that the Claimant's coverage for disability benefits was due to end on December 31, 2018, the end of her minimum qualifying period.

<sup>2</sup> Hearing recording at 2:00.

<sup>3</sup> Hearing recording, 2:55.

Member: Have you emailed the Tribunal previously?

Claimant: No, I haven't. I couldn't even get to my email because I don't have—

Member: [Interrupting] Is your email address stringblaster73@gmail.com?

Claimant: That's right, yeah.

The member told her that he would give her a week to send the documents to the Tribunal, and he read out the email address that she was to use. After the hearing, the member followed up with a letter that extended the deadline to September 23, 2020.<sup>4</sup>

[8] The General Division issued its decision on September 29, 2020, In its written reasons, the General Division noted that it had proceeded without having received any additional documents from the Claimant:

I explained to the Claimant during the oral hearing how the lack of evidence of a severe disability may affect her claim. She told me that she had more medical information that would help her appeal that had not been submitted yet. I gave her the opportunity to send more records in. She did not provide any more records or contact the Tribunal to say that there would be a delay.<sup>5</sup>

[9] The Claimant now insists that she did email additional medical records to the Tribunal within the deadline established by the presiding General Division member. The Claimant enclosed with her leave to appeal application three documents<sup>6</sup> that she claims to have sent to the Tribunal on September 15, 2020:

- an operative report dated May 27, 2020 by Dr. Robert Martin, gastroenterologist (two pages);
- a biopsy pathology report dated June 8, 2020 (one page); and
- a letter dated September 15, 2020 by Dr. Sunita McMullin, general practitioner (one page).

It appears that none of this material was previously submitted to the General Division. The Claimant says that she emailed the documents from a public library because she cannot afford

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<sup>4</sup> Tribunal letter dated September 10, 2020, GD4.

<sup>5</sup> General Division decision, paragraph 18.

<sup>6</sup> See Claimant's leave to appeal application, AD1-8 to AD1-11.

her own internet account. The records to which I have access show no indication that the Tribunal ever received these documents, either before or after the General Division’s deadline.

[10] I gave the Claimant an opportunity to prove that she had, in fact, sent additional documents to the Tribunal. She responded with a signed letter from the manager of her local library confirming that, on September 15, 2020, a four-page email was sent from her branch to the following address: “info.sst.tss@canada.”<sup>7</sup> Accompanying the letter was a partially redacted log, which I am reproducing here, of what appeared to be all emails sent from the branch between July 9, 2020 to October 31, 2020:

No.	Addressee	Start Time	Type	Prints	Result	Note
082	[REDACTED]	10-31 09:44	E-mail	001	OK	SNM_C300\20103109440
081	[REDACTED]	10-31 09:40	E-mail	001	OK	SNM_C300\20103109400
080	[REDACTED]	10-31 09:39	E-mail	001	OK	SNM_C300\20103109390
079	[REDACTED]	10-31 09:38	E-mail	001	OK	SNM_C300\20103109370
078	[REDACTED]	10-30 13:43	E-mail	004	OK	SNM_C300\20103013430
077	[REDACTED]	10-30 10:17	E-mail	008	OK	SNM_C300\20103010160
076	[REDACTED]	10-29 14:12	E-mail	002	OK	SNM_C300\20102914120
075	[REDACTED]	10-28 12:19	E-mail	001	OK	SNM_C300\20102812170
074	[REDACTED]	10-27 14:04	E-mail	002	OK	SNM_C300\20102714040
073	[REDACTED]	10-24 10:50	E-mail	003	OK	SNM_C300\20102410490
072	[REDACTED]	10-24 10:45	E-mail	003	OK	SNM_C300\20102410450
071	[REDACTED]	10-22 14:30	E-mail	004	OK	SNM_C300\20102214300
070	[REDACTED]	10-20 13:29	E-mail	001	OK	SNM_C300\20102013290
069	[REDACTED]	10-16 13:39	E-mail	001	OK	SNM_C300\20101613390
068	[REDACTED]	10-16 08:26	E-mail	001	OK	SNM_C300\20101608250
067	[REDACTED]	10-15 12:01	E-mail	001	OK	SNM_C300\20101512010
066	[REDACTED]	10-15 11:53	E-mail	001	OK	SNM_C300\20101511530
065	[REDACTED]	10-15 11:50	E-mail	002	OK	SNM_C300\20101511500
064	[REDACTED]	10-15 11:42	E-mail	001	OK	SNM_C300\20101511421
063	[REDACTED]	10-15 11:42	E-mail	001	OK	SNM_C300\20101511420
062	[REDACTED]	10-15 11:31	E-mail	001	OK	SNM_C300\20101511310
061	[REDACTED]	10-15 11:28	E-mail	002	OK	SNM_C300\20101511280
060	[REDACTED]	10-15 10:35	E-mail	001	OK	SNM_C300\20101510350
059	[REDACTED]	10-14 19:22	E-mail	001	OK	SNM_C300\20101419221
058	[REDACTED]	10-14 19:22	E-mail	001	OK	SNM_C300\20101419220
057	[REDACTED]	10-14 19:11	E-mail	001	OK	SNM_C300\20101419110
056	[REDACTED]	10-13 14:06	E-mail	001	OK	SNM_C300\20101314060
055	[REDACTED]	10-10 09:57	E-mail	001	OK	SNM_C300\20101009570
054	[REDACTED]	10-08 11:37	E-mail	001	OK	SNM_C300\20100811370
053	[REDACTED]	10-08 11:36	E-mail	001	OK	SNM_C300\20100811360
052	[REDACTED]	10-08 11:29	E-mail	001	OK	SNM_C300\20100811290
051	[REDACTED]	10-06 13:29	E-mail	001	OK	SNM_C300\20100613290
050	[REDACTED]	10-01 14:44	E-mail	001	OK	SNM_C300\20100114430
049	[REDACTED]	09-29 14:33	E-mail	001	OK	SNM_C300\20092914331
048	[REDACTED]	09-29 14:33	E-mail	001	OK	SNM_C300\20092914330
047	[REDACTED]	09-29 09:58	E-mail	001	OK	SNM_C300\20092909580
046	[REDACTED]	09-29 09:55	E-mail	002	OK	SNM_C300\20092909550
045	[REDACTED]	09-29 09:54	E-mail	002	OK	SNM_C300\20092909541
044	[REDACTED]	09-29 09:54	E-mail	002	OK	SNM_C300\20092909540
043	[REDACTED]	09-29 09:51	E-mail	001	OK	SNM_C300\20092909510
042	[REDACTED]	09-25 10:33	E-mail	001	OK	SNM_C300\20092510330
041	[REDACTED]	09-22 13:24	E-mail	001	OK	SNM_C300\20092213240
040	info.sst.tss@canada.	09-15 14:30	E-mail	004	OK	SNM_C300\20091514300
039	stringblaster73@gmail	09-15 14:30	E-mail	004	OK	SNM_C300\20091514290
038	[REDACTED]	09-15 13:55	E-mail	001	OK	SNM_C300\20091513550
037	[REDACTED]	09-15 09:02	E-mail	006	OK	SNM_C300\20091509020
036	[REDACTED]	09-08 14:13	E-mail	001	OK	SNM_C300\20090814130
035	[REDACTED]	08-20 13:05	E-mail	001	OK	SNM_C300\20082013050
034	[REDACTED]	08-12 13:04	E-mail	001	OK	SNM_C300\20081213040
033	[REDACTED]	08-12 12:40	E-mail	008	OK	SNM_C300\20081212390
032	[REDACTED]	08-08 08:29	E-mail	001	OK	SNM_C300\20080808290
031	[REDACTED]	08-06 09:33	E-mail	005	OK	SNM_C300\20080609320
030	[REDACTED]	07-31 08:02	E-mail	001	OK	SNM_C300\20073108020
029	[REDACTED]	07-30 13:10	E-mail	001	OK	SNM_C300\20073013100
028	[REDACTED]	07-22 18:13	E-mail	001	OK	SNM_C300\20072218130
027	[REDACTED]	07-21 15:21	E-mail	002	OK	SNM_C300\20072115210
026	[REDACTED]	07-21 15:15	E-mail	002	OK	SNM_C300\20072115140
025	[REDACTED]	07-15 18:49	E-mail	003	OK	SNM_C300\20071518490
024	[REDACTED]	07-15 15:21	E-mail	001	OK	SNM_C300\20071515210
023	[REDACTED]	07-09 11:46	E-mail	001	OK	SNM_C300\20070911460

Result OK: TX completed successfully, S-OK: TX stopped, NG: TX error, Memory Full: Memory full

<sup>7</sup> Letter dated November 3, 2020 from Krista Blyth, branch manager, Chipman Public Library, Chipman, New Brunswick, AD2-5.

At the Appeal Division hearing, the Claimant testified about her attempt to send the documents to the Tribunal. She said that she lives in rural New Brunswick and has no internet access. She said that, a few days after her General Division hearing, she drove to her local library. It offers a document scanning and email service at the desk, and she asked staff to send her documents to the email address that the member had given her, as well as to her personal email address. After receiving the Appeal Division's request for evidence that she had, in fact, sent the documents, she went back to the library and was given a printout showing what emails had been sent from the branch and when.

## **ISSUES**

[11] There are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.<sup>8</sup>

[12] At the hearing, we discussed three questions:

- Did the Claimant submit her additional medical evidence to the General Division within the established deadline?
- If so, did the General Division fail to observe a principle of natural justice by not considering, as promised, the Claimant's additional medical evidence?

[13] My job was to determine whether these issues fell into one or more of the permitted grounds of appeal and, if so, whether any of them had merit.

## **ANALYSIS**

[14] The Claimant alleges that the General Division treated her unfairly. She says that the General Division should not have issued its decision without considering, as promised, her additional medical evidence.

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<sup>8</sup> *Department of Employment and Social Development Act (DESDA)*, s. 58(1).

[15] Having reviewed the record and listened to the Claimant's testimony, I have decided that the General Division breached a principle of natural justice when it proceeded to render a decision in the absence of her additional evidence.

[16] These are my reasons.

**The Claimant submitted her additional evidence within the deadline**

[17] The Claimant insists that she submitted the additional medical evidence only a few days after the General Division hearing. I believe her.

[18] She testified before me that she had no means of her own to fax or email her documents to the Tribunal. She noted that she was under severe time pressure because the General Division had originally given her only seven days to make her submission.<sup>9</sup> She reasoned that the fastest way to get her documents to the Tribunal was to use facilities available at the local library. On September 15, five days after the General Division hearing, she drove to the nearest town and asked library staff there to email her documents to the email address the General Division member had given her: info.sst-tss@canada.gc.ca.

[19] The Claimant later furnished evidence that she had done just that. After receiving my leave to appeal decision, she returned to the library and obtained a letter from the branch manager that said:

An email consisting of four pages was sent from this facility on September 15<sup>th</sup>, 2020 at 14:30 to the following address, info.sst-tss@canada.

This information reflected what appeared to be an extract from a log of emails sent from the branch, all of them redacted except two that were sent to the following addresses:

info.sst-tss@canada.

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<sup>9</sup>The hearing recording indicates that the presiding General Division member spoke over the Claimant at one point and did not give her a chance to explain that she had limited access to the internet and email. The General Division's original seven-day deadline may have prompted the Claimant to send her documents by a method that was less familiar to her than post, which is what had she used for her previous submissions to the Tribunal.

stringblaster73@gmail

The second email address, the Claimant testified, is her own. Even though she does not have regular access to email, she wanted her own electronic copy of the documents.

[20] Lacking suffixes, the email addresses listed in the library manger's letter and accompanying log are obviously incomplete and incorrect. The Minister's representative seized on this to argue that the General Division could not have received the documents, because the Claimant sent them to the wrong email address. I am not so sure. When I examine the log, it looks like there is room for only a limited number of characters in the "Addressee" column, cutting off the ends of the both visible email addresses. To me, it seems likely that the library manager, perhaps without thinking about it too much, simply copied the truncated SST email address from the log to her letter.

[21] For that reason, I cannot agree with the Minister's representative that the incorrect email address in the letter definitively proves that the Claimant (or library staff) bungled the sending of her documents. In fact, I think it far more likely that the Claimant did succeed in sending her documents to the Tribunal on September 15, 2020. I can't be sure what happened to them after they arrived at the Tribunal. I have no doubt that the presiding General Division member never saw them, but I also know that the Tribunal has an administrative structure in which the email could have been ignored or misplaced. Mistakes sometimes happen, even in highly systematized bureaucracies. I strongly suspect that the Claimant's email was lost somewhere in the Tribunal shortly after receipt.

**The General Division violated natural justice by not considering the additional evidence**

[22] The Minister argues that, even if the General Division received the documents by the specified deadline, it did the Claimant no injustice by ignoring them. The documents, said the Minister, were irrelevant, and their exclusion from evidence caused the Claimant no harm.

[23] For the following reasons, I disagree.

***The Claimant's additional documents are relevant***

[24] According to the Minister, it doesn't matter whether the Claimant sent in additional medical information, because that information would not have changed the outcome of the General Division's proceeding.

[25] My review of the documents leads me to another conclusion. It is not my role at this point to determine whether the document prove her disabled, but I can say that they meet a minimum threshold of relevance to the main issue. None of the documents had been previously submitted to the General Division, and they all deal with Crohn's disease, the Claimant's primary condition. While it is true, as the Minister says, that the documents are all dated after December 31, 2018, they were all prepared within two years of the MQP.

***The Claimant has the right to present her fullest case***

[26] While the General Division has the discretion to admit or refuse evidence, such discretion must be exercised in keeping with the principles of natural justice. One of those principles is the right to be heard, which means that a claimant must be given a full and fair opportunity to present relevant evidence in support of their case. Here, the Claimant was unrepresented and may not have appreciated the quality and quantity of evidence generally required to prove disability. Gathering and submitting medical evidence is not easy at the best of times, and it is all the more difficult during a pandemic. The record shows that the Claimant did everything reasonably possible to get her three medical reports to the Tribunal in time but, for whatever reason, they were misplaced.

[27] The Claimant had a right to expect that the General Division would consider her supplemental evidence before dismissing her case. I say this bearing mind the courts' view that benefits-conferring legislation should be interpreted in a broad and generous manner.<sup>10</sup> In my view, such legislation must also encompass procedural regulations governing the submission of documents.

**REMEDY**

[28] The Appeal Division can provide a remedy for errors committed by the General Division. I have the power to: (i) give the decision that the General Division should have given; (ii) refer

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<sup>10</sup> See *Re Rizzo & Rizzo Shoes Ltd.*, 1998 SCC 837.



the matter back to the General Division for reconsideration; or (iii) to confirm, rescind, or vary the General Division's decision.<sup>11</sup>

[29] The Appeal Division is required to conduct proceedings as quickly as circumstances and considerations of fairness allow but, in this case, I feel my only option is to return this matter to the General Division for another hearing, subject to directions.

[30] I do not think that the record is complete enough to allow me to decide this matter on its merits. The General Division lost medical documents that, if they had been considered, might have produced a different outcome for the Claimant. Unlike the Appeal Division, the General Division's primary mandate is to hear evidence and make findings of fact on questions of disability. As such, it is better positioned than I am to assess whether the Claimant is regularly incapable of substantially gainful employment.

### CONCLUSION

[31] For the reasons discussed above, I am allowing this appeal because the General Division misplaced the Claimant's additional medical reports, thereby depriving her of her right to present her full case.

[32] I am returning this matter to the General Division for another hearing. If possible, I ask that it be assigned to the same member who heard it previously.



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Member, Appeal Division

HEARD ON:	January 7, 2021
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	W. W., Claimant T. W., Representative for the Claimant

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<sup>11</sup> DESDA, s. 59(1).

	Suzette Bernard, Representative for the Minister
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