



Citation: *AV v Minister of Employment and Social Development*, 2022 SST 1684

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal and Decision

Appellant (Claimant): A. V.
Respondent: Minister of Employment and Social Development
Representative: Jared Porter

Decision under appeal: General Division decision dated August 16, 2022
(GP-20-2073)

Tribunal member: Kate Sellar
Decision date: December 1, 2022
File number: AD-22-803

Decision

[1] I am granting the Claimant permission (leave) to appeal. I am also allowing the appeal. The General Division made an error by failing to provide the Claimant with a fair process.¹ I will return the appeal to the General Division for reconsideration by a different member. These reasons explain why.

Background

[2] A. V. (Claimant) stopped working in June 2017 when he found his friend deceased in their shared apartment. This was a traumatic and significantly affected the Claimant's mental health. The Claimant was diagnosed with Post-Traumatic Stress Disorder, Anxiety, Major Depressive Disorder, Insomnia Disorder, and Nightmare Disorder. For a significant period, the Claimant was unable to work in any capacity. He applied for and received long-term disability benefits from his workplace insurer.

[3] The Claimant applied for a *Canada Pension Plan* (CPP) disability pension on August 19, 2019. The Minister of Employment and Social Development (Minister) refused his application. The Claimant appealed to this Tribunal.

[4] The Tribunal sent the Claimant a notice of hearing by email, and contacted the Claimant several times by phone and left voice mail messages reminding the Claimant about his upcoming hearing. The General Division held a hearing in-person at a Service Canada office. The Claimant did not attend the hearing.

[5] The General Division was satisfied that the Claimant had notice of the hearing, and so the General Division went proceeded with the appeal. The General Division issued its decision on August 16, 2022.

[6] The General Division dismissed the Claimant's appeal, finding that the Claimant had functional limitations that affected his ability to work, but his personal circumstances meant that he had some capacity for work. Since he had some capacity for work, he

¹ An error of natural justice.

had to show that efforts to get and keep work failed because of his disability. Without testimony on this point from the Claimant, the General Division dismissed the appeal.

The parties agree on the outcome of the appeal

[7] After a settlement conference, the parties have asked for a decision based on a written agreement dated December 1, 2022.

[8] The agreement says:

THE PARTIES AGREE that the Appeal Division should allow this appeal because the General Division made an error of natural justice within the meaning of paragraph 58(1)(a) of the *Department of Employment and Social Development Act* (DESDA):

- The General Division failed to observe a principle of natural justice when it made a decision without the participation of the [Claimant].

THEREFORE, under section 18 of the *Social Security Tribunal Regulations*, and subsection 59(1) the *DESDA*, the parties request the Tribunal refer the matter back to the General Division for a new hearing before a different Member.²

I accept the parties' agreement

[9] In my view, the General Division made an error by failing to provide the Claimant with a fair process.

[10] The *Department of Employment and Social Development Act* (Act) states that the General Division makes an error when it fails to observe a principle of natural justice.³ The principles of natural justice are about providing a fair process. What fairness requires depends on the circumstances.⁴ The right to be heard is a fairness concept.

² See AD2-2.

³ See section 58(1)(a) of the *Department of Employment and Social Development Act* (Act).

⁴ See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

[11] When a party does not attend a hearing, and the General Division is satisfied that the party had notice of the hearing, the General Division can continue with the hearing and then issue a decision without further participation by the missing party.⁵

[12] However, in this particular case, I am satisfied that (despite the Tribunal's best efforts), the Claimant did not actually have notice of the hearing. As a result, making a decision without the Claimant's participation in this particular case was not a sufficiently fair process and interfered with the Claimant's right to be heard.

[13] Consistent with the parties' agreement, I am granting leave to appeal and allowing the appeal.

[14] I am returning the matter to the General Division for reconsideration by a different member.⁶ To fix the error, the Claimant needs an opportunity to participate in a hearing at the General Division in order to provide testimony about all of the relevant issues, including:

- any functional limitations that affect his ability to work, and
- any efforts he may have made to get and keep work.

Conclusion

[15] I granted permission (leave) to appeal. I allow the appeal. The General Division failed to observe a principle of natural justice. The appeal will return to the General Division for reconsideration by a different member.

Kate Sellar
Member, Appeal Division

⁵ See section 12 of the *Social Security Regulations*.

⁶ See section 58(1) of the Act.