



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. P. v. Canada Employment Insurance Commission and Max Fuel Distributors Ltd.*,
2016 SSTA DEI 220

Tribunal File Number: AD-15-340

BETWEEN:

D. P.

Appellant

and

Canada Employment Insurance Commission

and

Max Fuel Distributors Ltd.

Respondents

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: April 20, 2016

DECISION: Appeal allowed

Canada^{ca}

DECISION

[1] The appeal is allowed. The case will be returned to the General Division for reconsideration.

INTRODUCTION

[2] On April 17, 2015, a General Division member determined that the appeal of the Employer from the previous determination of the Commission should be allowed. The Appellant appealed that decision to the Appeal Division and leave to appeal was granted.

[3] This appeal was decided on the record.

ANALYSIS

[4] In his submissions, the Appellant (who is also the claimant) makes a number of arguments. One of those arguments is that he never received notice of the General Division hearing. He asks that his appeal be allowed.

[5] The Commission, noting that the General Division member appears to have found that the Appellant personally signed for the notice of hearing, disputes this claim. They do agree, however, that if there was a “possible” breach of natural justice they would not oppose a new General Division hearing being ordered.

[6] No submissions were received from the Employer.

[7] It has long been held that the right to be heard is a fundamental natural justice right and it is well established that the denial of this right is a breach of the principles of natural justice that constitutes grounds for a new hearing.

[8] In her decision, the General Division member noted (at paragraph 8) that

“...while the Tribunal has been communicating with the claimant, he has either not responded or his mail has been returned.”

[9] The General Division member makes no further comment on the Appellant's lack of attendance.

[10] This is unfortunate, because according to the Social Security Tribunal Regulations a Tribunal member may only proceed with a hearing in the absence of a party if they are satisfied that the party had notice of the hearing. Reading the General Division member's decision I am left with no way of determining on what basis she decided to proceed, especially in light of the fact that she was aware that some letters (including the notice of hearing) had been returned undelivered.

[11] In fact, a review of the file indicates that the Tribunal may have omitted part of the Appellant's address when mailing various documents to him. I therefore have no hesitation in accepting the arguments of the Appellant that he deserves a new hearing.

[12] Before concluding, however, I wish to directly address the Commission submissions referenced above. Correctly, they note that the General Division member stated (at paragraph 4) that:

“The **employer** did not attend the hearing scheduled for April 15, 2015. Information retrieved from Canada Post indicates that the **claimant** received the Notice of Hearing on February 4, 2015.”

[emphasis added]

[13] As a review of the file indicates that the Employer signed for their notice of hearing on February 4, 2015, I find that the above reference to “the claimant” is mistaken, and that the member actually intended to refer to the Employer. As such, the above paragraph does not affect my findings.

[14] A new hearing before the General Division is required.

CONCLUSION

[15] The appeal is allowed. The case will be returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division