



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *L. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 370

Tribunal File Number: AD-17-618

BETWEEN:

**L. C.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

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

---

DECISION BY:: Pierre Lafontaine

DATE OF DECISION: October 26, 2017

## REASONS AND DECISION

### DECISION

[1] The appeal is allowed and the matter is referred back to the General Division for a new hearing.

### INTRODUCTION

[2] On August 20, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) concluded that the Appellant's earnings had been allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] On September 11, 2017, the Appellant filed an application for leave to appeal before the Appeal Division. On September 26, 2017, the application for leave to appeal was granted.

### ISSUE

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

### THE LAW

[5] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) The General Division 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.

## ANALYSIS

[6] The Appellant states that she moved on June 24, 2017. She argues that she has a record of her calls and that she received no calls or messages from the General Division between June 27 and August 17, 2017. The hearing before the General Division proceeded in the Applicant's absence on August 1, 2017. The notice of hearing, dated June 30, 2017, was sent to her previous address and was returned to the General Division by the postal service and labeled "unclaimed".

[7] The Respondent recommends that the matter be returned to the General Division because there was a failure to observe the rule regarding a person's right to be heard, given that the notice of hearing was sent to the Appellant's previous address.

[8] The file shows that the notice of hearing of June 30, 2017, had been sent to the Appellant's previous address and was returned to the General Division by the postal service and marked as "unclaimed". Other than the mention of telephone messages left at an unidentified voicemail box, there is no note in the file confirming that the Appellant had been notified of the hearing date. The file also shows that the Appellant had sent the General Division her new address on August 10, 2017, whereas the General Division decision had not yet been rendered.

[9] The Tribunal acknowledges the General Division's attempts to send the June 30, 2017, notice of hearing to the Appellant; however, under the circumstances, it would have been preferable to send out a new notice of hearing following the change of address, rather than render an *ex-parte* decision.

[10] Case law tells us that if there is the slightest doubt that a principle of natural justice was not respected, the Tribunal is justified in returning the file for a new hearing.

[11] Therefore, in light of the arguments in support of the Appellant's appeal and in light of the Respondent's position, the Tribunal agrees that the appeal should be allowed.

## **CONCLUSION**

[12] The Tribunal allows the appeal and refers the matter back to the General Division (Employment Insurance Section) for a new hearing.

[13] The Tribunal orders that the General Division decision dated August 20, 2017, be removed from the file.

Pierre Lafontaine

Member, Appeal Division