



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. T. v Canada Employment Insurance Commission*, 2018 SST 1302

Tribunal File Number: AD-18-510

BETWEEN:

**A. T.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Stephen Bergen

DATE OF DECISION: December 20, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is allowed.

### **OVERVIEW**

[2] The Appellant, A. T. (Claimant), was dismissed because of an altercation with a fellow employee. His application for Employment Insurance benefits was denied on the basis that he had lost his employment as a result of misconduct. The Claimant requested that the Respondent, the Canada Employment Insurance Commission (Commission), reconsider this decision, but the Commission maintained its decision. The Claimant appealed to the General Division of the Social Security Tribunal, which scheduled a teleconference hearing. The Claimant did not call in to the teleconference, and the General Division proceeded with the hearing on the record. The General Division confirmed that the Claimant had been terminated for misconduct and dismissed his appeal.

[3] The Claimant appeals this decision to the Appeal Division on the basis that he missed the oral hearing and was denied the opportunity to be heard.

[4] The appeal is allowed. By proceeding on the record without providing the Claimant with an opportunity to explain his failure to appear or to provide additional submissions on the merits of the appeal, the General Division breached the Claimant's natural justice right to be heard.

### **ISSUE**

[5] Did the General Division fail to observe a principle of natural justice by proceeding with the hearing in the absence of the Claimant?

## ANALYSIS

### General Principles

[6] The Appeal Division's task is more restricted than that of the General Division. The General Division is required to consider and weigh the evidence that is before it and to make findings of fact. In doing so, the General Division applies the law to the facts and reaches conclusions on the substantive issues raised by the appeal.

[7] However, the Appeal Division may intervene in a decision of the General Division only if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[8] The grounds of appeal are described below:

- 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.

### **Did the General Division fail to observe a principle of natural justice by proceeding with the hearing in the absence of the Claimant?**

[9] The General Division proceeded in the absence of the Claimant on the authority of section 12(1) of the *Social Security Tribunal Regulations*, which allows the Tribunal to proceed in the absence of a party where the Tribunal is satisfied that the party received notice of the hearing.

[10] However, the General Division decision must also be consistent with the requirements of natural justice. One of those requirements is that individuals affected by the process are aware of the case to be met and given a reasonable opportunity to present evidence and make arguments to

the decision-maker, including the opportunity to respond to another party's presentation. It does not always require that an oral hearing be held.

[11] In this case, the hearing was scheduled as an oral hearing, to proceed by way of teleconference. The Claimant submitted that he had received the notice of hearing but then misplaced it when he moved. He had recalled the hearing date as July 23, 2018, when it was actually July 3, 2018. He stated that his memory has been affected by health problems, including post-traumatic stress disorder and mini-strokes. I accept that the Claimant intended to participate in the oral hearing and was honestly mistaken about the hearing date.

[12] According to the Claimant, when he found the paperwork and realized that his hearing had been scheduled for July 3, 2018, he contacted the Tribunal immediately. The Tribunal's telephone log shows that the Claimant called on July 19, 2018, to explain that he had accidentally missed his hearing and to ask whether a decision had been made.

[13] The Claimant anticipated presenting his evidence and arguments at an oral hearing but he was unable to do so, and he has now provided a reasonable explanation for having missed his scheduled hearing date. The Tribunal did not give the Claimant an opportunity to explain his failure to appear or to provide submissions in support of the substantive issues on appeal. I therefore find that the Claimant's ability to be heard was compromised.

[14] Given the fundamental nature of the natural justice right to be heard, I accept that the General Division failed to observe a principle of natural justice under section 58(1) of the DESD Act. I note that the Commission agrees that a principle of natural justice may have been breached and that it recommends the matter be referred back to the General Division.

## **CONCLUSION**

[15] The appeal is allowed. The matter is returned to the General Division for reconsideration.

[16] So far as reasonable and practicable, I further direct the General Division to arrange to have the reconsideration proceed by way of a new (*de novo*) oral hearing.

Stephen Bergen  
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
SUBMISSIONS:	A. T., Appellant  S. Prud'homme, Representative for the Respondent