



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. C. v Canada Employment Insurance Commission*, 2019 SST 70

Tribunal File Number: AD-18-558

BETWEEN:

K. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision by: Shu-Tai Cheng

Date of Decision: January 31, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed, and the matter is returned to the General Division for reconsideration in accordance with the reasons and the directions in this decision.

OVERVIEW

[2] The Appellant, K. C., applied for benefits under the *Employment Insurance Act*.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Appellant had voluntarily left his employment and, therefore, was not entitled to Employment Insurance benefits. The Appellant was late in making a request for reconsideration. The Commission did not reconsider its initial decision because it was not satisfied with the Appellant's explanation for the delay.

[4] The Appellant appealed the Commission's decision to the General Division of the Social Security Tribunal of Canada, but his appeal was filed eight days late. The General Division found that the Appellant did not provide an explanation for his delay, and it refused an extension of time.

[5] Leave to appeal the General Division decision to the Appeal Division was granted because the General Division may have made reviewable errors in its decision.

[6] The appeal is allowed because the General Division failed to consider the Appellant's reasons for being late and the proper issue on appeal to the General Division (the Respondent's refusal to reconsider its initial decision because of the Appellant's delay in requesting it). In this way, the General Division erred in law.

ISSUES

[7] Did the General Division err in law by failing to consider relevant evidence or by failing to assess the proper issues before it?

[8] If the General Division did err in law, should the Appeal Division refer the matter back to the General Division for reconsideration, or can the Appeal Division render the decision that the General Division should have rendered?

ANALYSIS

[9] The Appellant submits that he needs help communicating in writing in English and that it took extra time to find help to respond to letters from the Tribunal and from the Commission before that. He also submits that he was laid off and did not voluntarily leave his job. The Appellant submits that the General Division failed to consider his language limitations.

[10] The Respondent agrees and further submits that the matter should be returned to the General Division for reconsideration because the General Division was required to weigh the evidence and justify its conclusion, and it failed to do this by making a decision that did not refer to or consider the Appellant's communication skills in English. In addition, the General Division incorrectly assessed the issue before it to be whether the Appellant left his employment voluntarily. The issue on appeal was the Respondent's refusal to reconsider its initial decision because of the Appellant's delay in making a request.

[11] To conduct these proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit, I am rendering a decision on the merits of the appeal based on the written record.¹

Issue 1: Did the General Division err in law by failing to consider relevant evidence or by failing to assess the proper issues before it?

[12] I find that the General Division erred in law by failing to consider relevant evidence in the appeal record and by assessing the incorrect issue before it.

[13] The Appeal Division does not owe any deference to the General Division on questions of natural justice, jurisdiction, and law.² In addition, the Appeal Division may find an error in law, whether or not it appears on the face of the record.³

¹ *Social Security Tribunal Regulations*, ss 3 and 43.

² *Canada (Attorney General) v Paradis and Canada (Attorney General) v Jean*, 2015 FCA 242 at para 19.

³ *Department of Employment and Social Development Act*, s 58(1)(b).

[14] Here, the General Division found that the Appellant had not explained his eight-day delay in filing a notice of appeal with the Tribunal and did not demonstrate a continuing intent to appeal.

[15] However, the appeal record contained many references to the Appellant's language limitations:

- a) The Appellant stated that his communication skills and his English were not good,⁴ and he had difficulties speaking and understanding English.⁵
- b) During the fact-finding process that the Commission conducted with the Appellant, the Commission's agent expressed concern that the Appellant may not quite understand the questions he was asked.
- c) In his notice of appeal to the General Division, the Appellant referred again to those difficulties and requested to have a hearing in person.

This evidence was before the General Division, but there is no reference to it in the General Division's decision.

[16] The Respondent submits, therefore, that the General Division based its decision on an erroneous finding without having regard to all the material before it and therefore erred under section 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act).

[17] The Federal Court of Appeal cautioned that if a board or tribunal decides to dismiss contradictory evidence or assign little or no weight at all to such evidence, the board or tribunal must explain the reasons for the decision. Failing to do so presents a risk that its decision will be marred by an error of law or that it will be qualified as capricious.⁶

[18] The General Division's failure to consider the relevant evidence in the appeal file and explain the reasons for its decision in light of that evidence has resulted in an error of law.

⁴ GD3-17.

⁵ GD3-22.

⁶ *Oberde Bellefleur OP Clinique dentaire O. Bellefleur (Employer) v Canada (Attorney General)*, 2008 FCA 13.

[19] In addition, the General Division incorrectly assessed the question of whether the matter discloses an arguable case. It concluded “the information in the file discloses a very weak but arguable case” on whether the Appellant left his employment voluntarily.⁷ However, the issue on appeal was the Respondent’s refusal to reconsider its initial decision because of the Appellant’s delay in making a request.

[20] By incorrectly assessing the issue on appeal, the General Division erred in law.

Issue 2: Should the Appeal Division refer the matter back to the General Division for reconsideration, or can the Appeal Division render the decision that the General Division should have rendered?

[21] Because the General Division refused an extension of time, it did not consider the appeal on its merits. It did not review the evidence, assess credibility, weigh the evidence, and find the facts related to the issue before it. These tasks are necessary to properly consider and decide the appeal, and they are within the role of the General Division.

[22] As a result, the Appeal Division is not in the position to render the decision that the General Division should have rendered, and the matter must be referred back to the General Division for reconsideration.

CONCLUSION

[23] The appeal is allowed, based on section 58(1)(b) of the DESD Act.

[24] The matter is referred back to the General Division for reconsideration, in accordance with these reasons and this decision.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	K. C., self-represented
	I. Thiffault, for the Respondent

⁷ General Division decision at paras 13 to 17.