Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *R. A. v Canada Employment Insurance Commission*, 2019 SST 94

Tribunal File Number: AD-19-6

BETWEEN:

R. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision and Decision by: Paul Aterman

Date of Decision: February 7, 2019

Canada

DECISION AND REASONS

DECISION

[1] The application for permission to appeal is granted. The appeal is also granted. The result is that the General Division must hear this appeal again. These reasons explain why.

OVERVIEW

[2] R. A. is the Applicant in this case. She was working in a restaurant in X, Alberta from November 20, 2017 to March 2, 2018. She stopped working because she wanted to go to Calgary to join an apprenticeship program at a community college.

[3] She applied for Employment Insurance benefits, but the Canada Employment Insurance Commission (which I call the "Respondent" in these reasons) turned her down. The Respondent says she is not entitled to benefits because she chose to leave her job.

[4] The Applicant appealed to the General Division of this Tribunal on August 31, 2018.

[5] When she filled out her appeal form, the Applicant asked the Tribunal to communicate with her by email. She gave her email address. She also asked for a hearing using written questions and answers because she was going to be out of Canada for the next six months.

[6] The Tribunal did what she asked. It prepared the written questions that the Member needed to decide the case. It sent them out in a notice of hearing. It gave the Applicant time to answer them and send them back.

[7] But the Tribunal made a mistake. It sent the notice of hearing to the wrong email address. One character in the email address was missing.

[8] Because of this mistake, the Applicant did not receive the notice of hearing. As a result, she did not have an opportunity to explain why she felt the Respondent made the wrong decision. The Member decided she is not entitled to benefits. But he did not have an opportunity to read her answers to his questions when he made his decision.

[9] She now appeals that decision. She says it was not fair that she did not receive the notice of hearing because the Member decided her case without hearing her side of the story.

ISSUES AND ANALYSIS

[10] I need to decide two issues. First, should the Applicant be permitted to appeal the General Division's decision? If the answer to that question is "yes", then the second question is: should her appeal be allowed or dismissed?

Issue 1: Should the Applicant be permitted to appeal?

[11] In most cases, a party who wants to appeal a decision made by the General Division has to follow a process that has two steps.[1]

[12] The first step is to obtain permission to appeal. The Appeal Division will grant permission to appeal if there is an arguable case[2] that the General Division made an error. For an applicant to have an arguable case, the applicant does not have to show that the General Division **actually** made an error. They just have to show that the General Division **may** have made an error.

[13] The law is also clear that it cannot be just any error. The error has to be the kind that could enable the Appeal Division to overturn the General Division's decision.[3] Only then will the Appeal Division go on to decide whether to allow or dismiss the appeal.

[14] The Applicant has an arguable case because she has shown that the Tribunal may have made a mistake.

---

[1] The place where this rule can be found is at s.56 of the *Department of Employment and Social Development Act*, s 56, https://laws-lois.justice.gc.ca/eng/acts/H-5.7/page-7.html.
[2] Paragraph 12 of this decision of the Federal Court of Canada explains what it means to have an "arguable case": *Osaj v Canada (Attorney General)*, 2016 FC 115 http://canlii.ca/t/gn8zx.
[3] The kinds of errors that the Appeal Division can look at are found at s.58 of the *Department of Employment and Social Development Act*, https://laws-lois.justice.gc.ca/eng/acts/H-5.7/page-7.html . In this case, the error that I am looking at is at section 58(1)(a). The legal language in section 58(1)(a) is whether the General Division "failed to observe a principle of natural justice." What this means in plain language is whether the General Division held the hearing in a way that was so unfair that the hearing has to be done again.

[15] Her application for permission to appeal states that there was "no response to the Tribunal Question and Answer request due to communication errors between the Tribunal and the [Applicant]."

[16] I reviewed the Tribunal's file and the General Division's decision. They show clearly that the Applicant wanted to pursue her appeal at the General Division. For example, she had been sending evidence about her case to the Tribunal even before the Tribunal sent the notice of hearing. Her actions before the Tribunal sent the notice of hearing, together with her statement in the application for permission to appeal that she did not receive the Tribunal's questions, lead me to conclude that she has shown that the Tribunal may have made a mistake in the way it handled her appeal. The result is that my answer to the first question is "yes."

Issue 2: Should her appeal be allowed?

[17] Normally, when the Appeal Division grants permission to appeal, the applicant and the respondent then have 45 days[4] to send the Tribunal written arguments about whether the appeal should be allowed or dismissed.

[18] After 45 days, the Appeal Division will decide to either allow or dismiss the appeal, or it will schedule a hearing of the appeal.[5] However, if there are special circumstances,[6] the Appeal Division does not need to follow this schedule.

[19] This is a case where there are special circumstances. This is because it is unusual for the Tribunal to make a mistake that leads to one of the parties not receiving notice of the hearing into their case. In addition, it is clear that this mistake alone is a good enough reason to overturn the General Division's decision. I do not need to hear from either the Applicant or the Respondent in order to come to this decision. In fact, all I would be doing is wasting their time and effort if I required them to take 45 more days to send me written arguments. For these reasons, I will decide whether to allow or dismiss the appeal right now.

---

[4] This time limit can be found in the *Social Security Tribunal Regulations*, s 42.
[5] This rule can be found in the *Social Security Tribunal Regulations*, s 43.
[6] The rule which deals with special circumstances can be found in the *Social Security Tribunal Regulations*, s 3.

[20] Our legal system runs on basic principles of fairness. One of them is that if a tribunal is going to make a decision that affects your rights, then you must be given a chance to put your case in front of the person who makes the decision. What that means in practice, is that you have a right to receive notice of the hearing into your case. The notice has to be delivered to you at the most recent address you have given the tribunal. It can be an email address or a postal address.

[21] In this case that did not happen. There is no dispute about the facts. The Tribunal's own file shows that:

- The Applicant gave the Tribunal clear information about how to contact her by email;
- She wanted to pursue her appeal in writing;
- The Tribunal made a mistake by sending the notice of hearing to the wrong email address; and
- The direct result of this mistake was that the Member assumed that the Applicant had lost interest in pursuing her appeal. He decided the appeal without having heard her side of the story.

[22] By failing to send the notice of hearing to the correct address, the Tribunal did not give the Applicant the right to participate fully in her own appeal. It is well established in our law that when a tribunal decides on someone's rights but does not give them a chance to participate in the process that leads to that decision, then that is unfair[7]. An unfair decision has to be overturned. The answer to the second question is also "yes", so the appeal is allowed.

CONCLUSION

[23] The application for permission to appeal is granted, and the appeal is allowed. The appeal is returned to the General Division for a new hearing.

[7] This is a basic principle of our law. An example of how that principle is applied to s.58(1) (a) is explained in paragraph 29 of the decision of the Federal Court of Canada in *Miter v Canada (Attorney General)*, 2017 FC 262.

[24] On behalf of the Tribunal, I apologise to the Applicant and the Respondent for the inconvenience caused by the Tribunal's mistake in this case.

Paul Aterman
Member, Appeal Division

REPRESENTATIVE:	Dean Adams, for the Applicant