



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *P. T. v Canada Employment Insurance Commission*, 2019 SST 200

Tribunal File Number: AD-18-536

BETWEEN:

**P. T.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 14, 2019

## DECISION AND REASONS

### DECISION

[1] The Tribunal allows the appeal and refers the file back to the General Division for reconsideration.

### OVERVIEW

[2] The Appellant, P. T. (Claimant), applied for Employment Insurance benefits, and a benefit period was established effective December 17, 2017. The Claimant then asked to have this claim antedated to October 15, 2017, the beginning of his unemployment. The Canada Employment Insurance Commission refused to antedate the claim because it found that the Claimant had not shown good cause for his delay in applying.

[3] The Commission also found that the Claimant was not available for work as of December 17, 2017, because he made no efforts to find work after he filed his application and because he limited his availability to certain jobs. The Claimant requested a reconsideration of the decision, but the Commission upheld its initial decision.

[4] In its decision, the General Division found that the claim for benefits could not be antedated because the Claimant had not shown good cause for his delay in applying for benefits. It also found that the Claimant had not proven that he was available for work according to the requirements of section 18(1)(a) of the *Employment Insurance Act*.

[5] The Tribunal granted leave to appeal. The Claimant argues that the General Division proceeded in his absence and that he did not have the opportunity to be heard by the General Division.

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

[7] The Tribunal allows the Claimant's appeal and refers the file back to the General Division for reconsideration.

## ISSUE

[8] Did the General Division fail to observe a principle of natural justice?

## ANALYSIS

### **The Appeal Division's Mandate**

[9] The Federal Court of Appeal has determined that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).<sup>1</sup>

[10] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or 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, the Tribunal must dismiss the appeal.

### **Issue: Did the General Division fail to observe a principle of natural justice?**

[12] The Tribunal is of the opinion that the Claimant's appeal should be allowed and the file should be referred back to the General Division for reconsideration.

[13] In support of his appeal, the Claimant cites section 58(1)(a) of the DESD Act.

[14] The Claimant argues that the General Division proceeded in his absence even though he had not personally received the notice of hearing. He submits that he did not have the opportunity to be heard by the General Division because he did not know the date of the hearing.

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[15] The Commission respectfully recommends that the case be referred back to the General Division because the rules of natural justice were breached.

[16] For the reasons above, the appeal should be allowed.

### **CONCLUSION**

[17] The appeal is allowed, and the file is referred back to the General Division for reconsideration.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	March 13, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCE:	P. T.ivierge, Appellant