



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. M. v Canada Employment Insurance Commission*, 2019 SST 347

Tribunal File Number: AD-18-706

BETWEEN:

R. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: April 8, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Appellant, R. M. (Claimant), had voluntarily left an employment without just cause. It also determined that the Claimant failed to disclose that he had left another job after he left the job that he reported in his application for benefits. In a decision dated October 26, 2015, the Commission disqualified the Claimant from receiving benefits from the beginning of his claim, and the Commission required him to repay all the benefits he had received. It also imposed a penalty for making a false statement and issued a notice of violation.

[3] The Commission sent these decisions to the Claimant by regular mail. The Claimant dropped off a request for reconsideration on February 20, 2018, in which he claimed that he had never received the original decision, but the Commission refused to reconsider its decision on the basis that his request was late.

[4] The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed his appeal, finding that the Commission had exercised its discretion judiciously when it refused to reconsider. The Claimant is appealing to the Appeal Division.

[5] The appeal is allowed. The manner in which the General Division proceeded effectively denied the Claimant the right to be heard.

ISSUE(S)

[6] Did the General Division fail to observe a principle of natural justice by proceeding by way of questions and answers?

ANALYSIS

[7] 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 as follows:

- 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.

Did the General Division fail to observe a principle of natural justice by denying the Claimant the right to be heard?

[9] The General Division did not hear directly from the Claimant because it chose to proceed by way of questions and answers.

[10] It is apparent from the General Division’s questions that it was only interested in the Claimant’s reasons for making a late application, having supposed that the decision was delivered 10 days from the date it was mailed.

[11] The deadline for filing a request for reconsideration is 30 days from the date that the decision is communicated, not from the date on the decision or the date that it is mailed. While there is a presumption at the Appeal Division that decisions of the General Division are communicated 10 days from the date that it is sent by regular mail, there is no parallel presumption authorized by the Employment Insurance Act for the communication of initial decisions. The date that the decision was communicated to the Claimant must be established by evidence.

[12] The Claimant submitted a statement in which he denied receiving the original decision. However, the General Division stated that the Claimant's statement was not credible because he had previously received other mail at the address to which the Commission addressed the decision letter. It referred to the date on the decision letter and apparently took judicial notice that mail is usually delivered in Canada within 10 days to infer that he had received the letter by November 5, 2015. There was no evidence that the Commission mailed the decision letter on the same date as that date written in the letter. There was also no direct evidence as to the date that Canada Post actually delivered the decision letter or other evidence of the length of time that Canada Post would expect to take to deliver the letter to the Claimant's address.

[13] In support of the Claimant's appeal, the Commission now argues that the General Division's decision to proceed by way of questions and answers "prevented him the opportunity to fully present his case and to be heard, on the issue of the delayed request for reconsideration." The Commission submitted that the Claimant's response "demonstrates that he did not fully understand the General Division's questions and consequently, was unable to provide clear and intelligible answers."

[14] I agree. I find that the manner in which the General Division proceeded adversely affected the Claimant's right to be heard. To be clear, I do not mean that an oral hearing is always required to satisfy the requirements of natural justice, or even necessarily required in circumstances where credibility is at issue, and I appreciate that the General Division is master of its own procedure. However, I do find that an oral hearing was required in these particular circumstances for the reasons which follow.

[15] The General Division based its decision on an adverse finding of credibility, which was based on its own view of the plausibility of the Claimant's denial. However, the General Division provided only the sparsest of reasons for its plausibility/credibility finding. If the General Division is going to base its decision on an inference based on its own understanding of Canada Post's usual delivery times and its presumption that the letter was mailed the same day it was dated, **in preference** to the Claimant's direct statement, then it is incumbent on the General Division to provide the Claimant the fullest opportunity to explain and support his statement.

[16] In addition, the General Division did not structure its questions to the Claimant in such a way as to obtain a full explanation or to test the claimant's credibility or the plausibility of his explanation. In his response to the General Division's questions, the Claimant emphasised his limited understanding and lack of legal advice, and that he still hoped to obtain advice.

[17] I find that the choice of questions and answers did not provide the Claimant with an adequate opportunity to be heard, and that the General Division thereby failed to observe a principle of natural justice, an error under section 58(1)(a) of the DESD Act.

CONCLUSION

[18] The appeal is allowed.

REMEDY

[19] I direct that the matter be returned to the General Division for reconsideration pursuant to my authority under section 59 of the DESD Act. I also direct the General Division to proceed by way of oral hearing to the extent that such is practicable.

Stephen Bergen
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
Submissions:	R. M., Appellant S. Prud'homme, Representative for the Respondent