



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. S. v Canada Employment Insurance Commission*, 2019 SST 511

Tribunal File Number: AD-18-791

BETWEEN:

B. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: May 27, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] B. S. (Claimant) established an initial claim for Employment Insurance (EI) regular benefits effective May 2016. A few months later, the Claimant took a job with a construction company, but he left that job on December 31, 2016, after working for about a month. The Respondent, the Canada Employment Insurance Commission (Commission), concluded that the Claimant voluntarily left his job at the construction company without just cause, and the Commission therefore imposed an indefinite disqualification against him.¹

[3] The Claimant challenged the Commission's decision, but the Commission maintained it on reconsideration. The Claimant then challenged the Commission's reconsideration decision to the Tribunal's General Division, but the General Division dismissed his appeal. In short, the General Division concluded that the Claimant made a personal choice to quit his job with the construction company and that he failed to exhaust all reasonable alternatives before quitting.

[4] Earlier, I granted leave to appeal in this case. The Commission now accepts that the appeal should be allowed based on a breach of the principles of natural justice and that the matter should be sent back to the General Division for reconsideration. I agree. These are the reasons for my decision.

ISSUE

[5] Did the General Division breach a principle of natural justice by failing to discuss with the Claimant the fact that his advocate had withdrawn the day before the hearings?

¹ *Employment Insurance Act*, ss 29 and 30.

ANALYSIS

[6] The Claimant filed his notice of appeal on June 18, 2018, with the help of an advocate from the Community Unemployed Help Centre.² In fact, the General Division opened two appeals in the Claimant's name (GE-18-2118 and GE-18-2119), though the Claimant only appealed the General Division decision in file GE-18-2118, which is the case before me. The General Division scheduled hearings in both files, with one being held immediately after the other.

[7] On August 8, 2018, the General Division sent notices confirming that the hearings would be held by videoconference on October 23, 2018.³ The day before the hearings, however, the Claimant's advocate withdrew from both appeals.⁴ The hearings nevertheless proceeded as scheduled, without any acknowledgment of the advocate's last-minute withdrawal.

[8] By proceeding in this way, the Commission now accepts that the General Division breached a principle of natural justice, as described under section 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).⁵ As a result, the Commission also accepts that I have the power to intervene in this case, and suggests that I send the matter back to the General Division for reconsideration.⁶

[9] I agree. The principles of natural justice oblige the General Division to conduct its hearings fairly, and fairness may be compromised when a claimant's representative withdraws at the last minute.⁷

[10] In this case, the Claimant was in an especially vulnerable position given the withdrawal of his advocate on the day before the hearings. In my view, the General Division should have

² GD2.

³ GD1.

⁴ GD6.

⁵ AD5.

⁶ DESD Act, s. 59(1).

⁷ *Kohazi v Canada (Citizenship and Immigration)*, 2015 FC 705 at paras 11-13; *Nemeth v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 590 at paras 13-16; *Castroman v Canada (Secretary of State)* (1994), 81 FTR 227 (TD).

recognized that the Claimant might not have been ready to proceed with the hearings on that day, and that that situation had arisen through no fault of his own.

[11] At the hearing before me, for example, the Claimant described various ways in which he would have presented his case differently if he had had more time to prepare, such as by gathering witness statements to collaborate his evidence. Indeed, from listening to the audio recording of the General Division hearings, I noted several points where the Claimant showed a lack of preparation, relied heavily on the advice of his former advocate, and even seemed uncomfortable with or unsure of why his advocate had taken a particular approach.

[12] In the circumstances, I am satisfied that there were numerous red flags that should have alerted the General Division member to the possibility that the Claimant was not ready to fully present his case on that day. In my view, the General Division could have better protected the fairness of the proceeding by addressing the representation issue with the Claimant. For example, the General Division could have asked the Claimant whether he was ready to proceed on that day and could have informed him of his ability to request for the hearings to be rescheduled.

CONCLUSION

[13] For the reasons described above, I am allowing this appeal and returning the matter to the General Division for reconsideration by a different member. Given the Claimant's express wish to present more corroborating evidence in support of his case, I am also directing the General Division to provide the Claimant with a period of at least 30 days in which he can file new evidence.

Jude Samson
Member, Appeal Division

HEARD ON:	April 17, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. S., Appellant

	S. Prud'Homme, Representative for the Respondent (written representations only)
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