



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. D. v Canada Employment Insurance Commission*, 2019 SST 758

Tribunal File Number: AD-19-133

BETWEEN:

G. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: July 12, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] G. D. (Claimant) worked in a fast food restaurant. He was separated from this employment and applied for regular Employment Insurance benefits. The Canada Employment Insurance Commission decided that the Claimant was disqualified from receiving benefits because he had voluntarily left his employment without just cause.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reason. I granted leave to appeal this decision to the Tribunal's Appeal Division because the appeal had a reasonable chance of success on the basis that the General Division failed to observe the principles of natural justice by failing to ensure that the Claimant understood all of the questions posed to him, and as a result he was not able to fully present his case to the Tribunal. The appeal is dismissed because the General Division observed the principles of natural justice.

PRELIMINARY MATTER

[4] In its submissions for this appeal the Canada Employment Insurance Commission states that there may have been a breach of the principles of natural justice. The reason given for this is that there is evidence available that the Claimant did not present to the Tribunal. However, his failure to present some evidence does not point to any failure by the General Division to observe the principles of natural justice. The Tribunal therefore wrote to the parties and asked that they explain their position further, and asked the Claimant to answer written questions also. The Commission responded to this letter, and the response was considered in reaching this decision. The Claimant did not respond to this letter.

ISSUE

[5] Did the General Division fail to observe a principle of natural justice by failing to ensure that the Claimant understood all of the questions posed to him?

ANALYSIS

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that I can consider. They are that the General Division failed to observe a principle of natural justice, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.¹

[7] The principles of natural justice are concerned with ensuring that all parties to an appeal have the opportunity to present their case to the Tribunal, to know and answer the other party's legal case, and to have a decision made by an independent decision maker based on the law and the facts.

[8] The Claimant argues that the General Division failed to observe the principles of natural justice because English is not his first language, the hearing was conducted in English, he did not understand all of the questions posed to him at the hearing, and as a result he was not able to fully present his case and all of the relevant evidence to the Tribunal.

[9] The Canada Employment Insurance Commission acknowledges in their submissions that the Claimant's first language is not English, and states that the Claimant did not understand all of what happened at the General Division hearing.

[10] The Claimant's first language is Visaya, not English. He did not have an interpreter at the General Division hearing. The Claimant did not request an interpreter even though this option is given to all claimants on the Tribunal appeal forms. I have listened to the recording of the General Division hearing. The Claimant spoke English fairly clearly. Some of his answers to questions were not responsive to what was asked of him,² although most answers were clear and

¹ DESD Act s. 58(1)

² For example General Division hearing recording at approximate minute 7:45, 11:30

responsive. Nothing in the recording suggests that the Claimant did not understand the proceedings or was not able to communicate effectively in English. I am therefore satisfied that the Claimant was able to understand the General Division proceedings, and was not prevented from presenting his case to the Tribunal.

[11] The Commission's argument that the Claimant may not have understood the impact of having the hearing in English is speculation about the Claimant's ability to understand the hearing process. Nothing in the written record of the recording of the General Division hearing suggests that the Claimant was hampered by a lack of English language skills.

[12] The General Division did not fail to observe the principles of natural justice. The appeal fails on this basis.

[13] Also, the Claimant did not present some documentary evidence at the hearing although it was available. The Commission argues that the appeal should be referred back to the General Division for reconsideration so that this evidence can be considered. However, the presentation of new evidence is not a ground of appeal under the DESD Act. It is unfortunate that the Claimant did not present all of his evidence at the General Division hearing, however, the appeal cannot be allowed on the basis that he did not do so. Therefore, the appeal fails on this basis also.

CONCLUSION

[14] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	G. D., Appellant

	Angele Fricker, Representative for the Respondent
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