



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. A. v Canada Employment Insurance Commission*, 2019 SST 689

Tribunal File Number: AD-18-844

BETWEEN:

**A. A.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Decision by: Shu-Tai Cheng

Date of Decision: July 31, 2019

## DECISION AND REASONS

### DECISION

[1] The appeal is allowed, and the matter is returned to the General Division for reconsideration in accordance with the reasons and the directions in this decision.

### OVERVIEW

[2] The Appellant, A. A., applied for and received benefits under the *Employment Insurance Act*.

[3] The Respondent, the Canada Employment Insurance Commission, determined that the Appellant had knowingly made false representations by failing to declare earnings. The Commission allocated these earnings and imposed a penalty and a notice of violation on the Appellant. The Appellant requested reconsideration late, but the Commission did not reconsider its initial decision because it was not satisfied by the Appellant's explanation for the delay.

[4] The Appellant appealed the Respondent's reconsideration decision to the General Division of the Social Security Tribunal of Canada. The General Division found that the Appellant requested reconsideration over 365 days late and that the Commission acted judicially in its decision to deny an extension of time.

[5] Leave to appeal the General Division decision to the Appeal Division was granted because the General Division may have made reviewable errors in its decision.

[6] To be expeditious, this appeal is proceeding based on the written record, without an oral hearing.

[7] The appeal is allowed because the General Division failed to observe a principle of natural justice by proceeding with the hearing in the Appellant's absence.

### ISSUES

[8] Did the General Division fail to observe a principle of natural justice by proceeding with the hearing in the Appellant's absence?

[9] If the General Division did fail to observe a principle of natural justice, should the Appeal Division refer the matter back to the General Division for reconsideration, or can the Appeal Division render the decision that the General Division should have rendered?

## **ANALYSIS**

[10] The Appellant submits that he expected to be contacted about the General Division hearing but did not receive notice of the hearing.

[11] The Respondent agrees and further submits that the matter should be returned to the General Division for reconsideration because the General Division failed to hold a fair hearing with a full opportunity for the Appellant to present his case.

[12] To conduct these proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit, I am rendering a decision on the merits of the appeal based on the written record.<sup>1</sup>

### **Issue 1: Did the General Division fail to observe a principle of natural justice by proceeding with the hearing in the Appellant's absence?**

[13] I find that the General Division failed to observe a principle of natural justice because it did not give the Appellant a full opportunity to present his case at a General Division hearing.

[14] The Appeal Division does not owe any deference to the General Division on questions of natural justice, jurisdiction, and law.<sup>2</sup> In addition, the Appeal Division may find an error in law, whether or not it appears on the face of the record.<sup>3</sup>

[15] Here, the General Division was satisfied that the Appellant had received notice of the hearing, and it proceeded in his absence.

[16] However, the appeal record contains evidence that the Appellant did not receive notice of the hearing:

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<sup>1</sup> *Social Security Tribunal Regulations*, ss. 3 and 43.

<sup>2</sup> *Canada (Attorney General) v. Paradis and Canada (Attorney General) v. Jean*, 2015 FCA 242, at para. 19.

<sup>3</sup> *Department of Employment and Social Development Act*, s. 58(1)(b).

- a) The General Division scheduled a pre-hearing on June 12, 2018, in order to clarify the issues in the six appeals that the Appellant had filed at the General Division. The envelope containing the Notice of Pre-hearing was returned to the Tribunal undelivered. The pre-hearing did not take place.
- b) The Tribunal attempted to call the Appellant on June 15, 2018, to follow-up on the returned envelope, but the telephone number on file for the Appellant was out of service.
- c) The Tribunal confirmed the address on file for the Appellant by exchange of emails.
- d) The General Division did not reschedule the pre-hearing. Instead, on June 19, 2018, the Tribunal sent a Notice of Hearing to the Appellant's address on file, setting a hearing date of November 5, 2018.
- e) There is no "proof of service" document showing that the Appellant received the Notice of Hearing.

This evidence was before the General Division, yet the General Division was satisfied that the Appellant received notice of the General Division hearing.

[17] After leave to appeal to the Appeal Division was granted, the Appeal Division scheduled a pre-hearing conference. The Respondent attended but the Appellant did not.<sup>4</sup> The Respondent submitted that the pre-hearing conference should proceed, despite the Appellant's absence, because the Respondent accepted that there was a breach of natural justice and did not want to delay the process. In the circumstances, I agreed that it was the most expeditious way to proceed while respecting the principles of natural justice. At the pre-hearing conference, the Respondent submitted that, in the interests of fairness, this appeal should be allowed and the matter returned to the General Division for reconsideration.

[18] The Respondent accepts the Appellant's statement (in his application for leave to appeal) that he did not receive notice of the General Division hearing. The Respondent submits,

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<sup>4</sup> The Appellant contacted the Tribunal after the pre-hearing conference and said he thought that the Tribunal would call him for the pre-hearing conference and that is the reason he missed it. I note that the notice of pre-hearing conference, which the Appellant received, gave instructions for the parties to call in for the pre-hearing conference.

therefore, that the General Division breached a principle of natural justice by proceeding with the hearing in the Appellant's absence.

[19] I find that the General Division failed to observe a principle of natural justice. By proceeding with the hearing in the Appellant's absence, in the specific circumstances, the Appellant did not have a full opportunity to present his case at a General Division hearing.

**Issue 2: Should the Appeal Division refer the matter back to the General Division for reconsideration, or can the Appeal Division render the decision that the General Division should have rendered?**

[20] The Appeal Division cannot render a decision now. Because the Appellant did not have a full opportunity to present his case at a General Division hearing, it is inappropriate for the Appeal Division to render the decision that the General Division should have rendered.

[21] In addition, the Respondent has submitted that, in the interests of fairness, this matter should be returned to the General Division.

[22] Therefore, I am referring this matter back to the General Division for reconsideration in accordance with these reasons and this decision.

**CONCLUSION**

[23] The appeal is allowed, based on ss. 58(1)(a) of the *Department of Employment and Social Development Act*.

[24] The matter is referred back to the General Division for reconsideration, in accordance with these reasons and this decision.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVES:	A. A., self-represented  Louise Laviolette, for the Respondent
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