



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. S. v Canada Employment Insurance Commission*, 2019 SST 693

Tribunal File Number: AD-19-190

BETWEEN:

S. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: July 31, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] S. S. is the Claimant in this case. She applied for Employment Insurance (EI) regular benefits in May 2018. However, the Canada Employment Insurance Commission disqualified her from receiving those benefits, saying that she had lost her job because of her own misconduct.¹ The Claimant challenged that decision but the Commission maintained it on reconsideration.

[3] The Claimant then challenged the Commission's decision to the Tribunal's General Division. The General Division scheduled a teleconference hearing, but the Claimant did not attend. As a result, the General Division dismissed the appeal as abandoned, without considering the substance of the Claimant's appeal.

[4] The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division. On May 27, 2019, I granted leave (or permission) to appeal in this case. The Commission has since recommended that I allow the appeal and return the matter to the General Division for reconsideration.²

[5] I agree. These are the reasons for my decision.

ANALYSIS

[6] On January 30, 2019, the Tribunal's General Division issued its decision in this case. In a nutshell, the General Division concluded that the Claimant had abandoned her appeal because she had not participated in the teleconference hearing scheduled for earlier that month. In its very brief decision, the General Division did not consider any of the Claimant's arguments or whether

¹ Section 30 of the *Employment Insurance Act* sets out the Commission's power to disqualify claimants from receiving EI benefits.

² AD2.

the Commission had validly disqualified the Claimant from receiving EI benefits under sections 29 and 30 of the *Employment Insurance Act*.

[7] In this case, the notice that the Tribunal sent to the Claimant concerning the January 2019 hearing did alert her to the possibility that the Tribunal could proceed in her absence.³ The notice, however, did not mention any risk of the Tribunal declaring that the Claimant's appeal had been abandoned. Indeed, one of my colleagues has recently questioned whether the Tribunal has the legal authority to proceed in this way.⁴

[8] In any event, given that the General Division did not consider any of the Claimant's arguments, the Claimant was denied her right to be heard. The Commission accepts that the General Division breached a principle of natural justice in this case.⁵ I agree. In these circumstances, the appropriate remedy is to refer the appeal back to the General Division for reconsideration.⁶

CONCLUSION

[9] The appeal is allowed. I am referring the appeal back to the General Division for reconsideration.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVES:	S. S., Appellant S. Prud'Homme, Representative for the Respondent

³ GD1. Indeed, section 12(1) of the *Social Security Tribunal Regulations* envisions proceeding in the absence of a party if they receive a notice of hearing but then fail to attend the hearing.

⁴ *D. H. v Canada Employment Insurance Commission*, 2019 SST 546.

⁵ Section 58(1)(a) of the *Department of Employment and Social Development Act* (DESDA) allows me to intervene in cases where the General Division fails to observe a principle of natural justice.

⁶ Section 59(1) of the DESDA sets out the powers that I have to try to correct errors that the General Division has made. Among those powers, I can refer matters back to the General Division for reconsideration.