



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. A. v Canada Employment Insurance Commission*, 2019 SST 973

Tribunal File Number: AD-19-482

BETWEEN:

**M. A.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Stephen Bergen

DATE OF DECISION: September 12, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is allowed.

### **OVERVIEW**

[2] The Appellant, M. A.(Claimant), left her employment on August 31, 2018, but did not apply for Employment Insurance benefits until April 8, 2019. A few days after applying she requested that her claim be antedated. The Respondent, the Canada Employment Commission (Commission), denied her request to antedate and it started her claim on April 7, 2019. The Commission found that the Claimant did not have good cause to delay her application for benefits, and it maintained this decision on reconsideration.

[3] The Claimant appealed to the General Division of the Social Security Tribunal but she did not attend the scheduled hearing and the General Division dismissed her appeal. She now appeals to the Appeal Division

[4] The appeal is allowed. The General Division failed to observe the Claimant's natural justice right to be heard by making a decision without hearing from the Claimant and without confirming that the Claimant was properly notified of the hearing.

### **ISSUE**

[5] Did the General Division fail to observe a principle of natural justice by making a decision without hearing from the Claimant?

### **ANALYSIS**

#### **General Principles**

[6] 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 s.58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] The only grounds of appeal are described below:

- 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.

**Issue: Did the General Division fail to observe a principle of natural justice by making a decision without hearing from the Claimant?**

[8] The Claimant did not appear by telephone at the teleconference scheduled before the General Division. As a result, the General Division proceeded to make its decision on the record. The Tribunal made no attempt to determine why the Claimant did not attend, and she was not given the opportunity to provide submissions before the decision issued.

[9] The Tribunal records do not describe the method that the Tribunal used to send the Notice of Hearing to the Claimant or establish that the Claimant received the Notice of Hearing. A week before the hearing, the Tribunal attempted to reach the Claimant by telephone to confirm her attendance, but it could only leave a voice mail message. There was no other contact between the Tribunal and the Claimant before her hearing. In her application for leave to appeal, the Claimant asserted that she did not receive the Notice of Hearing.

[10] There is no evidence to the contrary and I accept that the Claimant did not receive the Notice of Hearing and that she not aware of the hearing date and time.

[11] The General Division did not give the opportunity to explain her absence or to provide submissions on her appeal. In addition, the General Division proceeded in the absence of the Claimant without confirming that she had received notice of the hearing as it is required to do under section 12(1) of the *Social Security Tribunal Regulations*.

[12] Therefore, I find that the General Division breached the Claimant's natural justice right to be heard, and erred under section 58(1)(a) of the DESD Act. I note that the Commission has provided submissions in support of this finding.<sup>1</sup>

### **REMEDY**

[13] I have the authority under section 59 of the DESD Act to give the decision that the General Division should have given, refer the matter back to the General Division with or without directions, or confirm, rescind or vary the General Division decision in whole or in part

[14] I can only make the decision the General Division should have made if I can find that the appeal record is complete. While the Claimant sought to address the merit and substance of her General Division appeal when she was before the Appeal Division, I informed her that the Appeal Division could not receive evidence that was not considered by the General Division. The Claimant has not yet had the opportunity to testify or submit any other evidence on which she intends to rely to the General Division, and it is therefore clear that the record is not complete.

[15] I agree with the recommendation of the Commission that the matter should be returned to the General Division and I direct that the matter be set down for an oral hearing before a member other than the one that issued the decision of July 3, 2019.

### **CONCLUSION**

[16] The appeal is allowed.

Stephen Bergen  
Member, Appeal Division

HEARD ON:	September 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. A., Appellant

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<sup>1</sup> AD2-2