



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *G. C. v Canada Employment Insurance Commission*, 2019 SST 1234

Tribunal File Number: AD-19-416

BETWEEN:

**G. C.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 24, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal allows the appeal on the application to amend or rescind the General Division decision. The case should be referred back to the General Division for reconsideration.

### **OVERVIEW**

[2] On October 5, 2017, the Tribunal's General Division determined that the Canada Employment Insurance Commission (Commission) had exercised its discretion judicially by denying the request from the Appellant (Claimant) to extend the 30-day period to make a request for reconsideration of a decision, under section 112 of the *Employment Insurance Act* and section 1 of the *Reconsideration Request Regulations*.

[3] The Appellant filed an application for leave to appeal to the Appeal Division. Leave to appeal was granted.

[4] In the meantime, the Claimant filed an application to amend or rescind the General Division decision. The General Division refused the Claimant's application on December 21, 2018.

[5] The Tribunal granted leave to appeal the decision on the application to amend or rescind. The Claimant argues that he was unable to attend the General Division hearing because he had to organize and attend his father's funeral.

[6] The Tribunal allows the Claimant's appeal.

### **ISSUES**

[7] Was there a failure to observe a principle of natural justice?

[8] Did the General Division err by refusing the Claimant's application to rescind or amend under section 66 of the DESD Act?

## **ANALYSIS**

### **Appeal Division's Mandate**

[9] The Federal Court of Appeal has established that the mandate of the Appeal Division has been conferred to it by sections 55 to 69 of the DESD Act.<sup>1</sup>

[10] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or 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, the Tribunal must dismiss the appeal.

### **Issue 1: Was there a failure to observe a principle of natural justice?**

[12] The Claimant argues that he was unable to attend the hearing about his application to amend or rescind the General Division decision because he had to organize and attend his father's funeral. The Claimant argues that there was a failure to observe a principle of natural justice.

[13] The Commission submits that the application to amend should be refused. However, given that the Appellant was not present at the hearing, it does not object to referring the case back to the General Division because there was a failure to observe a rule of natural justice.

[14] Considering the circumstances that the Claimant raised, the Tribunal is of the view that this ground of appeal should be given effect and that the case should be referred back to the General Division for reconsideration.

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

**Issue 2: Did the General Division err by refusing the Claimant's application to rescind or amend under section 66 of the DESD Act?**

[15] The Tribunal is also of the view that the General Division erred in law in its interpretation of section 66 of the DESD Act.

[16] The General Division based its decision to refuse the Claimant's application to rescind or amend solely on the ground that he did not present new material facts. Yet, section 66 of the DESD Act also allows the General Division to rescind or amend its decision if it is satisfied that the decision was given without knowledge of, or was based on a mistake as to, some material fact.<sup>2</sup>

**CONCLUSION**

[17] For the reasons mentioned above, the Tribunal allows the appeal. The case should be referred back to the General Division for reconsideration.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	September 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	None

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<sup>2</sup> *Green v Canada (Attorney General)*, 2012 FCA 313; *Badra v Canada (Attorney General)*, 2002 FCA 140.