



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Z. Z. v Canada Employment Insurance Commission*, 2019 SST 1381

Tribunal File Number: AD-19-668

BETWEEN:

**Z. Z.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Janet Lew

Date of Decision: November 27, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The application for leave to appeal is granted and the appeal is allowed. The matter is returned to the General Division for a hearing.

### **OVERVIEW**

[2] The Applicant, Z. Z. (Claimant), appeals the General Division's decision. An appeal is a two-step process. First, the Claimant has to get leave to appeal. This means that he has to get permission from the Appeal Division before he can move on to the next stage of the appeal process. Second, once he has leave, then the Appeal Division can decide whether there are reasons to allow the appeal.

[3] The Claimant argues that I should allow the appeal because the process at the General Division was unfair. He claims that he did not get fair notice of the hearing. The General Division sent a copy of the notice of hearing to the Claimant to his Google email address. The Claimant was overseas in China and claims that he did not have access to his Google email and therefore could not have known about the hearing. He did not return to Canada until after the General Division made its decision.

[4] A settlement conference was held on November 26, 2019. The Respondent, the Canada Employment Insurance Commission (Commission) does not agree that the General Division breached any principles of natural justice. However, the Commission does not object to having this matter returned to the General Division for a redetermination.

[5] Given the Commission's position, I am satisfied that (1) leave to appeal should be granted, and (2) the appeal should be allowed and the matter returned to the General Division for a hearing.

### **BACKGROUND HISTORY**

[6] The General Division scheduled a hearing for August 12, 2019. It sent a notice of hearing to the parties on August 2, 2019 by email attachment. The Claimant did not attend the hearing.

The General Division was satisfied that the Claimant received a copy of the notice of the hearing.

[7] During the hearing, the General Division contacted the Claimant and left a message reminding him about the hearing. The message also asked the Claimant to explain why he could not attend the hearing. The General Division went ahead with the appeal.

[8] The General Division made a decision on August 30, 2019. The member wrote, “[The Claimant] did not respond to explain why he did not show up.”<sup>1</sup> The General Division dismissed the appeal. It found that the Claimant was disentitled to the sickness benefits that he had received, so he had to repay them. The Social Security Tribunal sent a copy of the General Division’s decision to the parties on September 3, 2019.

[9] On September 30, 2019, the Claimant phoned the Social Security Tribunal. He explained that he had returned from China on September 19, 2019.

[10] The Claimant filed an appeal with the Appeal Division. He claimed that he had been away from July 25, 2019 to September 19, 2019. He had gone to China because his mother was ill. During that time, he was unable to and did not access his Google email. So, he did not know that a hearing had been scheduled. This is why he did not attend the hearing. He argues that it was unfair that the hearing went ahead without him, even though he did not get notice of the hearing.

[11] A settlement conference was held on November 26, 2019. The parties resolved all outstanding issues that were before the Appeal Division. Ultimately, the Commission does not object to having this matter returned to the General Division for a hearing on the merits of the appeal.

## **ISSUES**

[12] The following issues are before me:

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<sup>1</sup> See General Division decision at para. 4.

- (a) Is there an arguable case that there was a breach of natural justice?
- (b) Was there a breach of natural justice?

## ANALYSIS

### **(a) Is there an arguable case that there was a breach of natural justice?**

[13] Before the Claimant can move on to the next stage of the appeal, as the first step, I have to be satisfied that the Claimant's reasons for appeal fall into at least one of the types of errors listed in subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA). They are:

1. The General Division did not follow procedural fairness.
2. The General Division did not decide an issue that it should have decided. Or, it decided something that it did not have the power to decide.
3. The General Division made an error of law when making its decision.
4. The General Division based its decision on an important error of fact.

[14] The appeal also has to have a reasonable chance of success. A reasonable chance of success is the same thing as an arguable case at law.<sup>2</sup> This is a relatively low bar because claimants do not have to prove their case; they simply have to show that there is an arguable case. At the actual appeal, the bar is much higher.

[15] Procedural fairness has to deal with whether the process was fair. This includes whether a claimant received adequate notice of the hearing.

[16] In this case, I am satisfied that there is an arguable case that the Claimant did not receive adequate notice of the hearing. He was overseas and did not have access to his Google email account. He claims that he was unaware that there was a hearing scheduled for August 12, 2019.

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<sup>2</sup> This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[17] I am granting leave to appeal. I can now move onto the second step of this appeals process and determine whether there was a breach of natural justice.

**(b) Was there a breach of natural justice?**

[18] The Claimant produced copies of airline boarding passes.<sup>3</sup> They show that he was in transit on July 27, 2019 and on September 19, 2019. On July 27, 2019, he had flight X to Guangzhou. And, on September 19, 2019, he had flights X and X from Beijing to Toronto.

[19] On August 2, 2019, the Tribunal sent the notice of hearing to the Claimant's Google email address. He was in China, which does not allow access to Google services. This is a widely known fact.

[20] The Claimant did not notify the Tribunal that he was going to be away and unable to access his email. The General Division was unaware that the Claimant was away overseas and that he was unable to check his email for any notices.

[21] The General Division adhered to its own procedures and policies and made reasonable efforts to contact the Claimant. Even so, it is clear that the Claimant did not get adequate notice of the hearing, through no fault of the General Division. The Claimant could not check his Google email for any notices from the Tribunal and therefore did not know there was an upcoming hearing. He only learned about the hearing after he returned home to Canada and received the General Division's decision. The Claimant says that he should be given the opportunity to fully present his case, as he may have other evidence that he wants to give to the General Division.

[22] All claimants should let the Tribunal know of any travel plans or changes of contact information. This would allow the Tribunal to give adequate notice of any hearings.

[23] Although the Claimant neglected to let the Tribunal know that he was going to be away and therefore would be unable to access his email, I am nevertheless satisfied that the Claimant

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<sup>3</sup> See Notice of Appeal with the Appeal Division, at AD1-6.

did not get adequate notice of the hearing at the General Division. He should be given the chance to make his case, particularly as he suggests that he has more evidence to provide.

[24] To be clear, I have not considered the validity of the Claimant's arguments at the General Division. He will have a chance to revisit them at any hearing before the General Division.

**CONCLUSION**

[25] For the reasons I have set out above, I am granting the application for leave to appeal and allowing the appeal. I am returning this matter to the General Division for a hearing.

Janet Lew  
Member, Appeal Division

APPLICANT / APPELLANT:	Z. Z., Self-represented
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