



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. I. v Canada Employment Insurance Commission*, 2020 SST 99

Tribunal File Number: AD-19-896

BETWEEN:

A. I.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: February 6, 2020

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is granted, and the appeal is allowed.

OVERVIEW

[2] The Appellant, A. I. (Claimant), collected Employment Insurance benefits in 2016. Three years later, the Respondent, the Canada Employment Insurance Commission (Commission), investigated her claim based on information it had obtained from the Claimant's former employer. This information did not agree with the earnings the Claimant had declared on her claim reports, so the Commission found that she had made false statements and required her to repay some of the benefits she had received. The Commission maintained this decision in its reconsideration, so the Claimant appealed to the General Division.

[3] The General Division dismissed her appeal, and the Claimant is now seeking leave to appeal because she did not have a chance to present her side of the story. I convened a settlement conference in which the Commission agreed that the General Division erred and that the appeal should be returned to the General Division for reconsideration. The Claimant also agreed to her appeal being returned to the General Division.

[4] I grant the leave to appeal application, and I am also granting the appeal at the same time. I accept that the General Division failed to observe a principle of natural justice by determining the matter without hearing from the Claimant.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[5] Before I may even consider whether I should allow the appeal, I must find that there is a "reasonable chance of success" on one or more of the "grounds of appeal" found in the law. A reasonable chance of success means that there is a case that the Claimant could argue and possibly win.¹

¹ This is explained in *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41 and in *Ingram v Canada (Attorney General)*, 2017 FC 259.

[6] “Grounds of appeal” means reasons for appealing. I am allowed to consider only whether the General Division made one of these types of errors:²

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something 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.

[7] In this case, I have not only considered whether the Claimant could possibly win her appeal, but I have also combined the leave to appeal decision with the appeal on its merits. This means that I have considered whether the appeal should be allowed.

ISSUE

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

ANALYSIS

Natural Justice

[9] The Claimant’s Notice of Appeal to the General Division did not authorize the Tribunal to communicate with her by email. Therefore, the first Notice of Hearing, dated October 10, 2019, was sent by regular mail. The Claimant must have received that notice because she contacted the Tribunal on October 22, 2019, to ask for an adjournment. That request was granted, and a second Notice of Hearing, dated October 24, 2019, was sent to the Claimant, setting the hearing date for November 6, 2019. It is not apparent how that notice was sent.

[10] The Tribunal called the Claimant on November 6, 2019, the day of the hearing, to inform her that she had missed her hearing. The Claimant said that she did not receive the notice. The Tribunal called the Claimant again on November 7, 2019, and told the Claimant she could ask

² This is a plain language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

for an adjournment. However, the Claimant did not contact the Tribunal, and the General Division made its decision on November 18, 2019.

[11] The Claimant explained that she had forgotten to ask for the adjournment because she had been dealing with an emergency concerning her son's depression and substance abuse. She provided documentation that her son had been involuntarily admitted to hospital on November 13, 2019, under British Columbia's *Mental Health Act*.

[12] In a settlement conference of January 28, 2020, the Claimant and the Commission agreed on the record that the Claimant's natural justice rights were prejudiced by the General Division's decision. They also agreed that the matter should be returned to the General Division for a new hearing. I accept that this agreement is consistent with the requirements of natural justice and the law.

CONCLUSION

[13] The application for leave to appeal is granted, and the appeal is allowed on its merits.

REMEDY

[14] In accordance with my authority under section 59 of the DESD Act, I return the appeal to the General Division for a new hearing and a reconsideration.

Stephen Bergen
Member, Appeal Division

APPEARANCES:	A. I., self-represented Isabelle Thiffault, Representative for the Respondent
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