



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. B. v Canada Employment Insurance Commission*, 2020 SST 216

Tribunal File Number: AD-20-1

BETWEEN:

B. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: March 9, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant, B. B. (Claimant), is appealing the General Division's decision dated November 26, 2019. The General Division refused the Claimant's application to rescind or amend its earlier decision of September 18, 2019. (In its September 2019 decision, the General Division found that the Claimant had voluntarily left his job without just cause. The General Division decided that the Claimant was therefore disqualified from receiving Employment Insurance regular benefits.)

[3] The Claimant argues that the General Division should have rescinded or amended its September 2019 decision because he met all of the requirements under section 66(2) of the *Department of Employment and Social Development Act*.

[4] The Claimant argues that the General Division made errors of fact when it refused to rescind or amend its earlier decision. He also argues that the General Division member acted unfairly because he did not give the Claimant a chance to fully present his case.

[5] I am allowing the appeal of the General Division's decision of November 26, 2019.

ISSUES

[6] The issues before me are as follows:

- (a) Was it unfair for the General Division to issue its decision before the deadline for filing submissions had passed?
- (b) Did the General Division make errors of fact when it found that the Claimant did not present any "new" or "material" facts?

ANALYSIS

Issue 1: Was it unfair for the General Division to issue its decision before the deadline for filing submissions had passed?

[7] Yes, it was unfair for the General Division to issue its decision before the deadline for filing submissions had passed. The Claimant had told the Social Security Tribunal that he wanted the chance to respond further to the Commission's submissions. The General Division issued its decision without giving the Claimant a chance to respond further.

[8] Sections 47 and 48 of the *Social Security Tribunal Regulations* (Regulations) read:

47 A party may, within 30 days after the day on which the General Division or the Appeal Division sends a copy of the application,

(a) file documents or submissions with the General Division or the Appeal Division, as the case may be; or

(b) file a notice with the General Division or the Appeal Division, as the case may be, that they have no document or submissions to file.

48 After every party has filed a notice that they have no documents or submissions to file—or at the end of the period set out in section 47, whichever comes first—the General Division or the Appeal Division, as the case may be, must without delay

(a) make a decision on the application; or

(b) if it determines that further hearing is required, send a notice of hearing to the parties.

[9] The Claimant argues that the process was unfair because the General Division issued its decision before the deadline to file documents had passed.

[10] The Social Security Tribunal had written to the parties on November 4, 2019, letting them know that they had 30 days to file documents or submissions. The parties filed documents as follows:

- November 5, 2019—the Claimant filed a 38-page document¹

¹ See RAGD3.

- November 19, 2019—the Commission filed submissions²
- November 20, 2019—the Claimant filed a one-page response to the Commission’s submissions³

[11] According to phone log notes, the Claimant phoned the Tribunal on November 21, 2019, to ask about the Commission’s recent submissions and his response. He asked whether he would have the chance to attend another hearing based on the new information that he had provided. He wanted the chance to disprove that new information. It seems that he expected to be able to disprove the Commission’s submissions at a hearing.

[12] As I noted in my decision dated January 13, 2020, the General Division can make a decision on an application to rescind or amend without holding a hearing.⁴ However, the phone log notes do not indicate whether the Tribunal told the Claimant that the General Division could make a decision without holding a hearing. If it did, the phone log notes do not indicate whether the Tribunal also told the Claimant that he should file any additional documents or arguments because the General Division could make a decision without a hearing.

[13] It is unclear whether the General Division member was aware of the Claimant’s phone call to the Tribunal on November 21, 2019, and that he wanted to disprove that new information. The General Division did not ask the Claimant for any additional arguments he might have had at the time. The General Division went ahead and issued its decision on November 26, 2019, about a week before the 30-day deadline was due to expire.

[14] The Commission argues that the Claimant had every opportunity to present his case and says that there was no breach of natural justice. Besides, the Commission argues that the General Division complied with section 48 of the Regulations. The Commission argues that, once the parties filed submissions, the General Division had to make a decision immediately. I note, however, that the Regulations do not say that the time to file documents or submissions ends once the parties file documents or submissions.

² See Supplementary Representations of the Commission, at RAGD4.

³ See Claimant’s submissions, at RAGD5.

⁴ See Regulations, s 48.

[15] Neither the Claimant nor the Commission filed a notice that they had no documents or submissions to file, so under section 48 of the Regulations, the General Division was obliged to wait for 30 days to pass.⁵ It had to wait 30 days before it could make a decision on the application to rescind or amend. This is clearly set out in section 48 of the Regulations, which says “at the end of the period set out in section 47,” that is 30 days.

[16] By failing to wait for 30 days to pass, the General Division failed to follow sections 47 and 48 of the Regulations. It also failed to respect its own process that it set out in its letter of November 4, 2019.

[17] In my leave to appeal decision, I suggested to the Claimant that he should be prepared to describe how he intended to rebut the Commission’s November 19, 2019 submissions, as he said he wished to do. However, he was unable to say how he intended to rebut the Commission’s submissions. The Claimant also had not provided any additional documents or submissions to support his application to rescind or amend.

[18] Despite this, the Claimant should not be deprived of the chance to fully present his case. He had told the Tribunal that he wanted to further respond to the Commission’s arguments of November 19, 2019. Not giving the Claimant this chance risks placing the administration of justice into disrepute.

[19] I am allowing the appeal and returning this matter to the General Division. The General Division should give the parties a full 30 days to file any documents or submissions, unless the parties file a notice that they have no documents or submissions to file.

Issue 2: Did the General Division make errors of fact when it found that the Claimant did not present any “new” or “material” facts?

[20] I acknowledge that the Claimant argues that the General Division made factual errors in its decision. I do not need to address these arguments because I am allowing the appeal. However, the Claimant should file submissions or arguments with the General Division to show:

- that he has presented new facts to the General Division; or

⁵ See Regulations, ss 47 and 48. If the parties file a notice that they have no documents or submissions to file, the General Division can make a decision without having to wait for 30 days to pass.

- that the General Division’s September 2019 decision was made without knowledge of, or was based on a mistake as to, some material fact.

[21] The Claimant provided a copy of a fax that he sent his employer on June 29, 2018, to prove that his employer had approved a medical leave of absence. He wrote, “... this is to confirm my medical leave [...]. Hopefully by 2019 I will be able to return if my position is still available.”⁶ The Claimant should argue, for instance, how this particular fax, along with any other new evidence that he filed, represented new facts. Or, he should argue that the fax or other new evidence represented a material fact without which the General Division made its decision or on which it based a mistake.

CONCLUSION

[22] The appeal is allowed, and the matter is returned to the General Division.

Janet Lew
Member, Appeal Division

HEARD ON:	March 4, 2020
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	B. B., Appellant Melanie Allen, Representative for the Respondent (written submissions only)

⁶ See fax dated June 29, 2018, from the Claimant to his employer.