



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. T. v Canada Employment Insurance Commission*, 2020 SST 587

Tribunal File Number: AD-20-682

BETWEEN:

A. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 7, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal grants leave to appeal and allows the appeal. The matter returns to the General Division for reconsideration.

OVERVIEW

[2] The Applicant, A. T. (Claimant), worked at a daycare centre until her employer dismissed her. Her employer said that she had been dismissed because she did not wear gloves when she applied diaper cream on a baby. The Canada Employment Insurance Commission (Commission) accepted the employer's reason for the dismissal. It decided that the Claimant lost her job because of misconduct, and disqualified her from being paid benefits. The Commission upheld this decision upon reconsideration. The Claimant appealed the decision to the General Division.

[3] The General Division found that the Claimant violated the company's medication policy by applying diaper cream on a child without gloves. It found that this action was wilful and breached her duty to her employer. The General Division determined that since the Claimant had already received three prior written warnings, she should have known that she would be dismissed for not respecting the employer's policy. The General Division concluded that the Claimant lost her employment because of her misconduct.

[4] In support of her application for leave to appeal, the Claimant argues that the General Division failed to observe a principle of natural justice.

[5] The Tribunal must decide whether the General Division failed to observe a principle of natural justice.

[6] The Tribunal grants leave to appeal and allows the appeal. The file returns to the General Division for reconsideration.

ISSUE

[7] **Did the General Division fail to observe a principle of natural justice?**

ANALYSIS

Appeal Division's mandate

[8] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[9] 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.²

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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.

Did the General Division fail to observe a principle of natural justice?

[11] The Tribunal held a settlement conference.

[12] The Claimant, in her application for leave to appeal, invokes section 58(1) of the DESD Act.

[13] The Claimant submits that she received an email from the General Division but did not see there was an attachment. She was expecting the notice of hearing to be on the email page and not in the form of an attachment. She is not very good with computers and must go to her neighbors to access her emails.

[14] The Commission agrees that the matter should be sent back to the General Division because the Claimant did not have an opportunity to be heard.

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

² *Idem.*

[15] The concept of “natural justice” includes the right of a claimant to a fair hearing. A fair hearing presupposes adequate notice of the hearing, the opportunity to be heard, the right to know what is alleged against a party and the opportunity to answer those allegations.

[16] For the above-mentioned reasons, the Tribunal grants leave to appeal and allows the appeal.

CONCLUSION

[17] The Tribunal grants leave to appeal and allows the appeal. The file returns to the General Division for reconsideration.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVES:	A. T., Self-represented Isabelle Thiffault, representative of the Respondent
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