



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *SV v Canada Employment Insurance Commission*, 2021 SST 107

Tribunal File Numbers: AD-21-12
AD-21-13
AD-21-14
AD-21-15

BETWEEN:

S. V.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 25, 2021

REASONS AND DECISION

DECISION

[1] The Tribunal allows the Claimant's appeal. The files are returned to the General Division for reconsideration.

OVERVIEW

[2] The Appellant (Claimant) applied for Employment Insurance benefits starting November 22, 2015; November 20, 2016; December 10, 2017; and December 9, 2018. The Canada Employment Insurance Commission (Commission) reconsidered the Claimant's claims for benefits and determined that he had not had an interruption of earnings for the claims made on December 20, 2016; December 10, 2017; and December 9, 2018.

[3] The Commission also determined that the Claimant had not correctly reported the earnings he received from his employer for the weeks of January 3, 2016; March 19 and 26, 2016; and May 6, 2018. The Claimant asked for a reconsideration, but the Commission upheld the initial decisions. The Claimant appealed to the General Division.

[4] The General Division found that the Commission could reconsider the Claimant's claims for benefits within the 72-month timeframe set out in the *Employment Insurance Act*. It determined that the Claimant used a cell phone and a vehicle year-round, even when he was off work. It found that this constituted earnings that prevented an interruption of earnings and the establishment of a benefit period.

[5] The General Division also found that the amounts the Claimant received from his employer constituted earning that had to be allocated under section 36 of the *Employment Insurance Regulations*.

[6] The Claimant was granted leave to appeal to the Appeal Division. He submits that the General Division failed to observe a principle of natural justice. He argues that he did not receive the notice of hearing and therefore was unable to attend.

[7] I have to decide whether the General Division failed to observe a principal of natural justice.

[8] For the reasons below, I am allowing the Claimant's appeal.

ISSUE

[9] Did the General Division fail to observe a principal of natural justice even though the notice of hearing was sent to the Claimant's representative?

ANALYSIS

Appeal Division's Mandate

[10] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

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

[12] Therefore, unless the General Division failed to observe a principle of natural justice, made an error 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, I must dismiss the appeal.

Did the General Division fail to observe a principal of natural justice even though the notice of hearing was sent to the Claimant's representative?

[13] The Claimant argues that he did not receive the notice of hearing and that he did not have the opportunity to defend himself before the General Division. He argues that the General Division failed to observe a principle of natural justice.

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

[14] The notice of hearing was sent by email to the Claimant's representative on November 27, 2020. The General Division hearing took place on December 8, 2020. I note that the representative authorized the General Division to contact him by email by using the email address that he provided. A voicemail message was also left for the representative on December 4, 2020, notifying him of the hearing date.

[15] However, the General Division did not send the notice of hearing by mail, or email the Claimant directly, and he did not receive a call to his personal phone number. Only his representative received a voicemail message.

[16] This appeal raises the question of whether a claimant can use a breach of the principles of natural justice when the designated representative was properly notified of the General Division hearing.

[17] I am of the view that, when the Claimant has done nothing wrong and he is deprived of his right to be heard because of his lawyer's lack of diligence, there is a breach of a principle of natural justice.² Negligence on the part of a lawyer must not cause prejudice to a claimant who is not at fault.³

[18] On the face of the record, I note that the Claimant did nothing wrong and that he was deprived of the right to be heard at the General Division because of his lawyer's negligence.

[19] For the reasons mentioned above, I am of the view that the files must be returned to the General Division for reconsideration.

² *Shirwa v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3026 (FCA), [1994] 2 FC 51.

³ *Gulishvili v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1200, 225 FTR 248; *Mathon v Canada (Minister of Employment and Immigration)*, (1988), 28 FTR 217, 38 Admin. L.R. 193; *Shirwa*, above.

CONCLUSION

[20] The Tribunal allows the appeal. The files are returned to the General Division for reconsideration.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	March 23, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	None