



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *LL v Canada Employment Insurance Commission*, 2021 SST 683

Tribunal File Number: AD-21-43

BETWEEN:

**L. L.**

Appellant / Claimant

and

**Canada Employment Insurance Commission**

Respondent / Commission

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Janet Lew

DATE OF DECISION: June 23, 2021

## **DECISION AND REASONS**

### **DECISION**

[1] I am allowing the appeal. I am returning the matter to the General Division for reconsideration.

### **OVERVIEW**

[2] The Claimant, L. L., is appealing the General Division decision of January 18, 2021. The General Division found that the Claimant had knowingly given information and made statements about her Employment Insurance claim that were false or misleading.

[3] Given its findings, the General Division decided that the Canada Employment Insurance Commission had correctly cancelled the Claimant's benefit period. The General Division also decided that the Commission had correctly issued a warning to the Claimant.

[4] The General Division decision means the Claimant has a large overpayment to pay back.

[5] The Claimant argues that she did not get a fair hearing because of the quality of the interpretation. She claims that the interpreter did not fully understand her or accurately interpret her evidence. She claims that this led to what look like inconsistencies in her evidence. Because of these inconsistencies, the General Division found that she was not very credible. So, it did not believe her or accept her evidence.

[6] The Claimant has filed an affidavit. The affidavit shows that there are discrepancies in the interpretation. So, the Claimant is asking me for another chance to explain her case, with a different interpreter. Both she and the Commission are asking me to allow the appeal. They are also asking me to send this matter back to the General Division.

[7] In the interests of fairness and justice, I am allowing the appeal. I am also returning this matter to the General Division for reconsideration.

### **ISSUE**

[8] Did the Claimant receive a fair hearing?

## ANALYSIS

[9] The Appeal Division may intervene in General Division decisions<sup>1</sup> if there are jurisdictional, procedural, legal, or certain types of factual errors.<sup>2</sup> The parties agree that I can intervene in this case because the hearing at the General Division was unfair.

[10] The Claimant argues that she did not get a fair hearing. She relied on an interpreter who she claims, “didn’t express [her] idea and thoughts accurately ...”<sup>3</sup> She argues that because the interpretation was faulty, the “[General Division member] thought [her] testimony difficult to follow, evasive, and lacking in credibility.”<sup>4</sup>

[11] A barebones allegation from the Claimant would not be good enough. It would not be enough to prove her claim that the interpreter did not accurately interpret her evidence. But, the Claimant recently got an affidavit from an accredited interpreter and translator.

[12] The interpreter affirmed that he reviewed the audio recording of the General Division hearing. He pointed out five problems with the interpretation.<sup>5</sup>

[13] The Claimant admits that the problems with the interpretation do not touch on anything material in the General Division decision. Even so, the Claimant argues that the faulty interpretation still could have played a role in the General Division’s findings against her.

[14] I agree. The discrepancies appear insignificant. And, on their face, they do not seem to be the basis upon which the General Division based its decision. But, they could have coloured the General Division’s impression of the Claimant. They could have led the General Division to draw adverse findings of credibility against her. For this reason, I find that the Claimant did not get a fair hearing.

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<sup>1</sup> See section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

<sup>2</sup> In the case of factual errors, the Appeal Division may intervene under subsection 58(1)(c) of the DESDA if the General Division 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.

<sup>3</sup> Claimant’s submissions to the Appeal Division on March 6, 2021, at AD3-6, referring to General Division decision, at para. 12.

<sup>4</sup> *Ibid.*

<sup>5</sup> See affidavit affirmed on May 23, 2021, at AD72 to AD7-4.

## **REMEDY**

[15] How can I fix the unfairness? I have several choices.<sup>6</sup> I can substitute my own decision or I can refer the matter back to the General Division for reconsideration, with directions.

[16] The Claimant wants another chance to tell her story, with a different interpreter. The Commission says that the way to do that is to send this matter back to the General Division since the Appeal Division does not have any power to conduct a new hearing.

[17] I have to consider whether a reconsideration, including possibly having a new hearing at the General Division, is justified. After all, even the Claimant acknowledges that the problems with the interpretation were minor. She also acknowledges that they had no bearing on the outcome.

[18] If I were to make my own decision, I could resolve the problems with the interpretation using the affidavit evidence. There is much evidence, including the testimony of the Claimant and a witness, from which I could draw my own conclusions.

[19] However, I also have to consider the impact my decision has on the administration of justice. If there is a breach of the right to a fair hearing, a reassessment is usually appropriate. Since the hearing was flawed, leaving the General Division decision in place could put the administration of justice into disrepute.

## **CONCLUSION**

[20] In the interests of fairness and justice, I am allowing the appeal. I am returning this matter to a different member of the General Division for reconsideration, with directions. If the member holds a new hearing, the Tribunal shall arrange for a different interpreter from the one who appeared at the General Division hearing in January 2021.

Janet Lew  
Member, Appeal Division

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<sup>6</sup> Section 59 of the DESDA.

HEARD ON:	June 16, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. L., Appellant Ken Wise (counsel), Representative for the Appellant S. Prud'Homme, Representative for the Respondent (by way of written submissions only)