



Citation : *NA v Canada Employment Insurance Commission*, 2021 SST 746

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** N. A.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Angèle Fricker

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**Decision under appeal:** General Division decision dated October 20, 2021  
(GE-21-1626)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** On the record

**Decision date:** December 8, 2021

**File number:** AD-21-361

## Decision

[1] The appeal is allowed. The file returns to the General Division for reconsideration.

## Overview

[2] The Appellant (Claimant) stopped working on March 12, 2020, and submitted an application for sickness benefits. The Respondent (Commission) set up her claim for the EI Emergency Response Benefits (EI-ERB). When the EI-ERB ended, the Claimant collected the maximum 15 weeks of EI sickness benefits from September 27, 2020, to January 9, 2021. She requested regular EI benefits as of January 10, 2021.

[3] The Commission conducted a review of the EI benefits paid to the Claimant. It determined that the Claimant had failed to show she was otherwise available for work, if not for her illness. It also determined that the Claimant did not meet the availability requirements for regular EI benefits. After an unsuccessful reconsideration application, the Claimant appealed the Commission's decision to the General Division.

[4] The General Division proceeded with the hearing in the Claimant's absence. It found that the Claimant did not meet the availability requirements for sickness or regular EI benefits and was to be disentitled from receiving sickness or regular EI benefits from October 21, 2020, to October 31, 2021. The General Division also concluded that the Claimant was to be indefinitely disentitled as of January 10, 2021, because she did not meet the availability requirements.

[5] The Appeal Division granted the Claimant leave to appeal of the General Division's decision. She submits that the General Division process was not fair because she was sick and could not attend the hearing. The Claimant submits that the General Division unfairly ignored her medical note in order to refuse her adjournment request.

[6] I must decide whether the General Division failed to observe a principle of natural justice.

[7] I am allowing the Claimant's appeal. The file returns to the General Division for reconsideration.

## **Issue**

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

## **Analysis**

### **Appeal Division's mandate**

[9] 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.<sup>1</sup>

[10] 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.<sup>2</sup>

[11] 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.

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

<sup>2</sup> *Idem.*

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

[12] The General Division determined that the Claimant's medical note contained anomalies and refused the request for an adjournment of the scheduled hearing. It proceeded with the hearing in the Claimant's absence.

[13] The Claimant submits that the General Division process was not fair because she could not attend the hearing because she was sick. The Claimant submits that the General Division unfairly ignored her medical note and proceeded with the hearing in her absence. She submits that the General Division did not respect a principle of natural justice.

[14] The Commission does not object that the matter be returned to the General Division for redetermination without holding a hearing, if the Appeal Division so decides.

[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] I am of the view that the Claimant did not have an opportunity to be heard.

[17] I understand that the General Division had tried several times before to set a hearing date. I also understand that the Claimant will need to be available at some point in order for the General Division to hear her appeal. However, notwithstanding the medical note, the Claimant was clearly not available to proceed with a teleconference hearing on the day of the scheduled hearing. Therefore, I find that the General Division failed to observe a principle of natural justice.

[18] I am allowing the Claimant's appeal. The file returns to the General Division for reconsideration.

## **Conclusion**

[19] The appeal is allowed. The file returns to the General Division for reconsideration.

[20] I leave it to the General Division's discretion to decide the hearing type. However, I recommend that the General Division consider the Claimant's preference in deciding the hearing type in order that her appeal be conducted as quickly as the circumstances and the consideration of fairness and natural justice permit.

Pierre Lafontaine  
Member, Appeal Division