



Citation: *AK v Canada Employment Insurance Commission*, 2022 SST 77

Social Security Tribunal of Canada Appeal Division

Decision

Applicant: A. K.

Respondent: Canada Employment Insurance Commission
Representative: Melanie Allen

Decision under appeal: General Division decision dated January 14, 2022
(GE-22-19)

Tribunal member: Shirley Netten

Decision date: February 9, 2022
File number: AD-22-38

Decision

[1] Leave (permission) to appeal is granted and the appeal is allowed. The application is returned to the General Division for reconsideration by a different member.

Background

[2] A. K. (Claimant) asked the General Division to reopen its decision about her parental benefits, based on new facts. This is called an Application to Rescind or Amend.¹

[3] The General Division told the Claimant and the Commission that they had 30 days, until February 4, 2022, to file documents or submissions about the Application to Rescind or Amend.² The *Social Security Tribunal Regulations* (Regulations) say that the General Division must make its decision (or, if needed, hold a hearing) **after** the 30 day period is over or after the parties say that they have nothing to file.³

[4] The parties both filed materials on January 4, 2022. They did not say that they had nothing to file, or even that they had nothing more to file. But the General Division didn't wait until after February 4, 2022 to issue a decision. The General Division issued its decision on January 14, 2022.

There is agreement on the outcome of the appeal

[5] At a settlement conference, the parties agreed that the General Division proceeded in a way that was unfair, and contrary to the Regulations. They agreed that the matter should return to the General Division to be decided again.

¹ Under section 66 of the *Department of Employment and Social Development Act*

² "Documents" include letters, reports or other written materials that relate to the Application. "Submissions" are arguments about how the decision-maker should decide the Application.

³ Section 48 of the Regulations

[6] The grounds of appeal to the Appeal Division include errors of law, as well as procedural unfairness.⁴ In this case, the General Division did not follow the requirement in the Regulations to allow the parties 30 days to submit documents or submissions. Moreover, it was unfair to give the parties a timeline to make their case and then fail to respect that timeline. The parties did not have the chance to provide additional or responding materials to the General Division within the deadline. The way to fix this is to return the matter to the General Division to be decided again, after the parties have had the full opportunity to send in documents and submissions.

Conclusion

[7] On consent, I am giving the Claimant permission to appeal and allowing the appeal. I am returning her Application to Rescind and Amend to the General Division to be decided again, by a different member. The materials sent in to date⁵ will be in front of the new member at the General Division. The parties will be given a new 30-day window to file additional documents or submissions.⁶

Shirley Netten
Member, Appeal Division

⁴ Section 58(1)(a),(b) of the *Department of Employment and Social Development Act*

⁵ This includes RAGD2 (from the Claimant, December 25, 2021), RAGD3 (from the Commission, January 5, 2022), and RAGD4 (from the Claimant, January 5, 2022)

⁶ Consistent with section 47 of the Regulations