



Citation: *AT v Canada Employment Insurance Commission*, 2022 SST 224

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. T.

Respondent: Canada Employment Insurance Commission
Representative: Gilles Luc-Bélanger

Decision under appeal: General Division decision dated December 1, 2021
(GE-21-2246)

Tribunal member: Janet Lew

Type of hearing: On the Record

Decision date: April 7, 2022

File number: AD-21-433

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, A. T. (Claimant), is appealing the General Division decision. The General Division found that the Claimant was not entitled to additional weeks of Employment Insurance benefits. It determined that he had received the maximum number of weeks of Employment Insurance benefits to which he was entitled. The General Division determined that the Claimant's appeal did not have a reasonable chance of success. It summarily dismissed the Claimant's appeal.

[3] The Claimant argues that the General Division was biased and that it discriminated against him. He also argues that the General Division breached the principles of natural justice and made legal and factual errors. The Claimant asks for costs.

[4] The Appeal Division may intervene in General Division decisions only if there are any jurisdictional, procedural, legal, or certain types of factual errors.¹ I have to decide whether the General Division made any of these kinds of errors.

[5] I find that the General Division did not exhibit any bias or discrimination and that it did not violate any principles of natural justice. It ensured that the process was fair. The General Division also did not make any legal or factual errors.

Issues

[6] The issues in this appeal are:

- a) Did the General Division violate any principles of natural justice?

¹ See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). For factual errors, the General Division had to have based its decision on it, and it had to have been made in a perverse or capricious manner, or without regard for the material before it.

- b) Did the General Division make any legal errors?
- c) Did the General Division make any factual errors?
- d) Is the Claimant entitled to costs?

Analysis

[7] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.

[8] The Claimant's arguments are brief. He wrote:

The General Division erred in fact, law and/or a mix of fact and law, breached the principles of natural justice, including but not limited to, by operating under a real or perceived bias, whether an individual or institutional, and they failed to separate my father's appeal from my own, and my father is still awaiting an outcome of his E.I. income appeal, and I believe we are being discriminated against on the basis of family status, because my father's appeal got meshed into mine by the E.I. and the General Division ignored this, among other grounds I may advise later, in the second level of appeal may deem just.²

[9] On December 18, 2021, the Claimant notified the Social Security Tribunal that he did not have any further information or submissions to the file. He wrote that he was relying on his initial verbal, written, and electronic submissions that he had provided to both the General Division and the Appeal Division. He stated that he would let the Social Security Tribunal know if this were to change.

[10] Two days later, the Claimant filed documents. He wrote that these documents showed that his father's request for review/appeal had been placed in his file.³

[11] The Claimant's reasons for appeal centre on his arguments that the record before the General Division included his father's reconsideration request to the Respondent, the Canada Employment Insurance Commission (Commission).

² Claimant's Application to the Appeal Division – Employment Insurance, at AD1-4.

³ See Claimant's email of December 20, 2021, at AD3-1.

Did the General Division violate any principles of natural justice?

[12] The Claimant argues that the General Division violated principles of natural justice. He claims that the General Division was biased and that it discriminated against him because of his family status. He says this happened when his father's appeal "got meshed into [his appeal] and the General Division ignored this ..."⁴

– Whether the General Division was biased

[13] The Claimant argues that the General Division member was biased. However, he did not offer any evidence of bias by the General Division member, other than claiming that the General Division ignored the fact that documents relating to his father's appeal were included in his appeal record.

[14] The Supreme Court of Canada described the test for a reasonable apprehension of bias. It referred to Grandpré J.'s dissenting opinion in *Committee for Justice and Liberty v National Energy Board*:

... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining the required information ... [T]hat the test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."⁵

[15] The Claimant does not meet the test for a reasonable apprehension of bias. There is nothing to suggest that the General Division was unfair when it decided the matter.

[16] The General Division addressed the Claimant's allegations that the Commission "improperly intertwined his father's appeal with his own appeal,"⁶ at paragraphs 28 to 32. It did so in a dispassionate manner.

⁴ Claimant's Application to the Appeal Division – Employment Insurance, at AD1-4.

⁵ See *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369, at page 394.

⁶ See General Division decision, at para 28.

[17] The General Division assumed that the Claimant was referring to the two reconsideration requests in the hearing file.⁷

[18] The General Division noted that someone had altered the second reconsideration request. Someone wrote over part of the social insurance number and the name of the employer. Someone also attempted to sign over the Claimant's signature. The General Division assumed that the second reconsideration request was for the Claimant's father because the social insurance number differed from the Claimant's number.

[19] Other than these three differences, the General Division noted that the two reconsideration requests were mirror images of the other: each had the same address, name, telephone number, arguments, "everything,"⁸ including the date of the document. Both requests showed that the Commission's decision had never been communicated to them.

[20] Ultimately, the General Division found the second reconsideration request irrelevant. The General Division found that the second reconsideration request had no bearing on the issue of whether the Claimant was entitled to any additional weeks of benefits. The General Division concluded that the second reconsideration request did not change the legislation regarding the maximum number of weeks the Claimant could get.⁹ So, it did not matter then whether documents relating to the Claimant's father were and should not have been included in the Claimant's hearing file.

[21] I do not see anything in the second reconsideration request or anything in the hearing record that could have led the General Division to decide unfairly against the Claimant. As the General Division noted, the second reconsideration request was virtually identical to the first reconsideration request. The second reconsideration request identified the same decision to be reconsidered, and the reason for the second

⁷ See Reconsideration requests, at GD3-21 to GD3-22 and GD3-23 to GD3-24.

⁸ General Division decision, at para 31.

⁹ General Division decision, at para 33.

reconsideration request was the same as the reason given in the first reconsideration request.

– **Whether the General Division discriminated against the Claimant**

[22] Discrimination arises when someone is unfairly treated, on the basis of their actual or perceived membership in certain groups or categories.

[23] The Claimant argue that there was discrimination on the basis of his family status because his father’s appeal “got meshed into [his].”¹⁰

[24] Neither the General Division nor the Social Security Tribunal were responsible for including the second reconsideration request, or the document titled “GD03 – Reconsideration file.” The reconsideration file originated with the Commission.¹¹ If the second reconsideration request was mistakenly included in the reconsideration file, the error was made by the Commission, rather than by the General Division.

[25] But, I do not see any evidence of discrimination, even if the Claimant’s father’s reconsideration request was included with the Claimant’s appeal materials. There is nothing from the Claimant’s father’s reconsideration request that could have had any impact on the Claimant’s own appeal.

[26] The fact that a somewhat different reconsideration request was included in the Claimant’s appeal materials did not lead to any unfair treatment by the General Division. I do not see that there was any discrimination by the General Division against the Claimant.

[27] The General Division addressed each of the Claimant’s arguments. It reviewed and addressed the relevant evidence. The General Division made its decision based on the evidence that was before it. There were no extraneous considerations. Above all, the General Division treated the Claimant in an even-handed manner.

¹⁰ Claimant’s Application to the Appeal Division – Employment Insurance, at AD1-4.

¹¹ Under section 30 of the *Social Security Tribunal Regulations*, once the Commission gets a copy of the Notice of Appeal to the General Division, it has to produce a copy of the documents in its possession that are relevant to the decision being appeal.

– **Whether the Claimant had a fair chance to present his case**

[28] There may be a breach of natural justice if a claimant did not get an opportunity to present his case. So, I need to be satisfied that the General Division was vigilant in ensuring that it gave the Claimant a full and fair opportunity to present his case.

[29] The General Division summarily dismissed the Claimant's appeal. The Claimant did not have a hearing in which he could have made oral arguments in support of his case.

[30] But, under section 53 of the *Department of Employment and Social Development Act*, the General Division does not have any choice about summarily dismissing an appeal. The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success. As long as it is satisfied of this, then the General Division has to summarily dismiss the appeal.

[31] There are safeguards and checks in place to make sure that an appellant gets the chance to fully present their case.

[32] Before the General Division can summarily dismiss an appeal, it has to give written notice to an appellant that it is considering dismissing the appeal.¹² The General Division also has to give an appellant a reasonable timeframe to make submissions. That way, an appellant can object to the summary dismissal process and can argue about the appropriateness in using the procedure. The appellant can fully argue the merits of his case too.

[33] If the General Division had failed to give notice or a reasonable period of time to the Claimant to make submissions, that would be a breach of the rules of procedural fairness.

[34] The General Division emailed a letter to the Claimant on November 29, 2021. The General Division told the Claimant that it was considering summarily dismissing the

¹² See section 22(1) of the *Social Security Tribunal Regulations*.

appeal. The General Division explained why it was considering dismissing the appeal in this manner. The General Division wrote:

The Canada Employment Insurance Commission (Commission) has said that you were paid fifty weeks of benefits. (GD04-1)

Subsection 12(2.1) of the Employment Insurance Act (Act) says, in part, that the maximum number of weeks of benefits that may be paid in a benefit period which begins in the period of September 27, 2020, to September 25, 2021, is 50 weeks.

The Commission says they started your benefit period on October 4, 2020, which is between September 27, 2020, and September 25, 2021, so the maximum amount of benefits they can pay is 50 weeks. (GD04-1)

You told the Commission you feel that you should get additional weeks of EI benefits. (GD03-21)

Please explain why you feel you should be able to get more than the 50 weeks of benefits which subsection 12(2.1) of the Act says is the maximum that can be paid.

[35] The General Division gave the Claimant until December 3, 2021 to respond.

[36] The Claimant responded on November 29, 2021. He argued against summarily dismissing his appeal. The Claimant's response confirms that the General Division gave notice in a reasonable period to the Claimant to make submissions. Indeed, the Claimant does not complain that he did not have enough time to respond or that the General Division deprived him of the opportunity to make his case.

[37] I am satisfied that the Claimant had a fair and full opportunity to present his case.

Did the General Division make any legal errors?

[38] The Claimant argues that the General Division made a legal error. However, he has not identified any specific errors that the General Division may have made, other than to say that it included his father's request for reconsideration in the hearing file.

[39] As the General Division explained, the unrelated material did not have any bearing on the legal issues before it. The General Division had to decide whether the Claimant was entitled to any additional weeks of Employment Insurance benefits.

[40] I find that the General Division did not make a legal error when it concluded that the father's request for reconsideration was irrelevant. The fact that the Claimant's father had requested a reconsideration did not have any impact on the calculation of the weeks of benefits to which the Claimant was entitled.

[41] I will also examine whether the General Division made a legal error when it calculated how many weeks of benefits the Claimant was entitled to receive. The Commission argues the General Division did not make any legal error about the number of weeks of benefits the Claimant was entitled to get.

[42] In his request for reconsideration and Notice of Appeal, the Claimant argued that he was entitled to get more than just 50 weeks of Employment Insurance benefits. The General Division determined that 50 weeks represented the maximum number of weeks of benefits that the Claimant could get, given the circumstances. The General Division relied on section 12(2.1) of the *Employment Insurance Act* in coming to this determination.

[43] Section 12(2.1) of the *Employment Insurance Act* is a temporary measure, enacted in response to the pandemic. The section expressly sets the maximum number of weeks for which benefits may be paid at 50 weeks. The section applies to those whose benefit period begins during the period beginning on September 27, 2020 and ending on September 25, 2021.

[44] Outside of this benefit period, the maximum number of weeks of benefits is determined under section 12(2) of the *Employment Insurance Act*. The section states that the maximum number of weeks of benefits is determined by the table in Schedule I of the *Employment Insurance Act* by referring to the regional rate of unemployment that applies and the number of hours of insurable employment of a claimant in their qualifying period.

[45] The General Division determined that section 12(2.1) of the *Employment Insurance Act* applied in the Claimant's case because his benefit period began on October 4, 2020. (It did not begin earlier than that because the Claimant had been receiving Employment Insurance Emergency Response Benefits.)

[46] The General Division noted that the Commission had determined that, if section 12(2.1) of the *Employment Insurance Act* did not apply, the Claimant would have been entitled to fewer weeks of benefits. The Commission determined that the Claimant would have been entitled to 28 weeks of benefits.

[47] Although it is not relevant to my review of this matter, I note that the Commission calculated this correctly. If section 12(2) of the *Employment Insurance Act* had applied, according to Schedule I, based on the Claimant's 477 hours of insurable hours¹³ and 14.6% as the regional rate of employment, the Claimant would have been entitled to 28 weeks of benefits, instead of 50 weeks.

[48] The General Division did not make any findings regarding the calculation under section 12(2) of the *Employment Insurance Act*, as it did not apply and was irrelevant to the Claimant's circumstances.

[49] The General Division noted that the Claimant argued that he should have received additional weeks of benefits "pursuant to retroactive legislation."¹⁴ In his request for reconsideration, the Claimant also argued that he should receive additional weeks of benefits, "given the particulars and circumstances of [his] situation."¹⁵

[50] The Claimant's arguments had no merit. The General Division correctly calculated the Claimant's weeks of entitlement of benefits. The General Division did not make any legal errors by relying on section 12 (2.1) of the *Employment Insurance Act*. The Claimant was unclear about what particulars and circumstances he might have

¹³ See Attestation Certificate, at GD3-20.

¹⁴ See General Division decision, at para 21.

¹⁵ See Claimant's Request for Reconsideration, at GD3-21.

been thinking about, but there no circumstances would have changed the maximum entitlement of benefits.

Did the General Division make any factual errors?

[51] The Claimant argues that the General Division made an important error of fact. However, he does not identify any specific factual errors, other than to say that it overlooked the fact that his father's appeal was included in his appeal record. As I have noted above, the General Division was aware of and addressed the Claimant's argument that his father's appeal was included with the Claimant's appeal record.

[52] Apart from this argument, the Claimant has not made any other allegations that the General Division overlooked or ignored any other material facts.

[53] I have reviewed the underlying record to make sure that the General Division did not overlook, misconstrue or mischaracterize any important evidence. The General Division set out the relevant evidence. More importantly, the General Division's findings are consistent with the evidence that was before it.

Is the Claimant entitled to his costs?

[54] The Claimant is asking for his costs and expenses, including for printing, and getting legal advice to prepare his appeal.

[55] I am unable to grant the Claimant's request for costs. The Appeal Division does not have any authority to award costs, irrespective of whether a party is successful with their appeal.

Conclusion

[56] The appeal is dismissed. The General Division did not exhibit any bias or discriminate against the Claimant. The General Division did not violate any principles of

natural justice. It ensured that the process was fair. The General Division also did not make any legal or factual errors.

Janet Lew
Member, Appeal Division