



Citation: *WC v Canada Employment Insurance Commission*, 2022 SST 397

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: W. C.

Respondent: Canada Employment Insurance Commission
Representative: Isabelle Thiffault

Decision under appeal: General Division decision dated February 8, 2022
(GE-21-2435)

Tribunal member: Janet Lew

Type of hearing: On the Record
Decision date: May 16, 2022
File number: AD-22-178

Decision

[1] I am allowing the appeal and returning the matter to the General Division for a redetermination.

Overview

[2] The Appellant, W.C. (Claimant), is appealing the General Division decision. The General Division summarily dismissed the Claimant's appeal because it found that he did not have a reasonable chance of success. The General Division found that the Claimant did not meet the eligibility requirements to qualify for Employment Insurance benefits. In particular, it found that he did not have the required minimum hours of insurable employment to qualify for benefits.

[3] The Claimant argues that the General Division failed to observe a principle of natural justice. He also argues that the General Division made both legal and factual errors. He argues that the General Division should set aside the General Division decision and grant his appeal.

[4] The Respondent, Canada Employment Insurance Commission (Commission), argues that the Claimant's case is "preordained," no matter what evidence or arguments he might present. The Commission argues that the General Division did not make any errors when it summarily dismissed the appeal. The Commission asks the Appeal Division to dismiss the appeal.

Preliminary matters

[5] The Claimant argues that the Commission was late with its submissions to the Appeal Division. The Claimant alleges that, on top of that, the Commission has misled the Appeal Division with its submissions. As a result, he argues that the Appeal Division should not accept the Commission's submissions.

[6] The Social Security Tribunal (Tribunal) sent a letter to the parties by email on March 31, 2022, confirming that the Claimant had filed an appeal with the Appeal

Division. The Tribunal told the parties that they had until April 23, 2022 to file written arguments. The Commission filed submissions after this date, on April 28, 2022.

[7] On May 2, 2022, the Claimant advised that he was opposing the late submissions of the Commission. He suggested that the Commission should apply for permission to file its submissions.

[8] The Commission noted that the Claimant filed his appeal with the Appeal Division on March 8, 2022, but that it did not receive notice of the Claimant's appeal until March 31, 2022. The Commission calculated that it had until May 15, 2022 to file its submissions, according to its own guidelines.¹

[9] The Claimant notes section 36 of the *Social Security Tribunal Regulations*. The section lets the parties file submissions with the Appeal Division "within 45 days after the day on which the appeal is filed". The Claimant notes that 45 days is based on when the appeal is filed, rather than when a party receives notice of the appeal. He argues that it is irrelevant when the Commission received a copy of his notice of appeal. He argues the section clearly requires submissions within 45 days after the day on which a party files their appeal.

[10] The Claimant argues that the Commission should have to strictly comply with the 45-day deadline under the Regulations. He says it should not matter when the Commission received a copy of his appeal.

[11] I have to consider the interests of justice. The Commission essentially says that it was delayed in filing submissions because it did not receive notice until more than three weeks after the Claimant filed his appeal.

[12] However, the Commission still had three weeks during which it could have filed submissions, or failing that, could have sought an extension of time.

¹ See Commission's Supplementary Representations dated May 5, 2022.

[13] Even so, I am going to allow the Commission's submissions. The delay is not excessive and the Commission has a reasonable excuse for the delay. More importantly, it serves the interests of justice to have submissions from both parties.

Issues

[14] The Claimant has raised several issues. He argues that the General Division made several errors including a failure to observe the principles of natural justice. I will focus on whether the General Division failed to observe the principles of natural justice.

Analysis

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

Did the General Division violate any principles of natural justice?

[16] The Claimant argues that the General Division violated principles of natural justice. He claims that the General Division failed to provide him with a fair opportunity to present his case.

[17] The Claimant received a letter dated January 28, 2022 from the Tribunal. The General Division member advised that he was considering summarily dismissing the appeal, for the reasons set out in the letter.

[18] The General Division member also wrote:

If you believe this appeal should not be summarily dismissed, the Tribunal must receive your **detailed written submissions** explaining why your appeal has a reasonable chance of success, no later than **February 28, 2022**.

If the Tribunal has not received your written submissions by the specified date, the Tribunal will make a decision based on the information already on file.

[19] The Claimant understood that he had until February 28, 2022 to file submissions.

[20] On that same date, the Claimant wrote to the Tribunal, seeking disclosure of documents from the Commission. The Claimant did not receive any response from the Tribunal to his letter.

[21] The General Division then issued its decision on February 8, 2022. The General Division dismissed the appeal. It found that the Claimant had not provided any information or plausible arguments that would reasonably lead it to conclude that the Claimant had sufficient insurable employment hours to qualify for benefits.²

[22] The Claimant says that it was unfair that the member made a decision without waiting for his submissions, particularly as he had been seeking full disclosure from the Commission. He also says that he was waiting for a report from Canada Revenue Agency, before filing his submissions. The Claimant says that he clearly indicated in his email of January 28, 2022, that he would be filing detailed written submissions explaining why his appeal had a reasonable chance of success.

[23] Section 22(1) of the *Social Security Tribunal Regulations* requires the General Division to give notice in writing to an appellant and allow them a reasonable period of time make submissions, before summarily dismissing an appeal.

[24] Here, the General Division recognized that it had to give an appellant a reasonable period of time to make submissions. The General Division gave the Claimant to February 28, 2022.

[25] However, the General Division issued its decision 20 days before its own deadline. This was despite the fact that the Claimant had stated that he would be filing detailed submissions. It is clear that the General Division failed to give the Claimant a fair opportunity to present his case.

² See General Division decision, at para 20.

Remedy

[26] The Claimant argues that the appropriate remedy is to set aside the General Division decision and allow his claim.

[27] The Commission, on the other hand, says the appeal should be dismissed because the outcome of the Claimant's appeal is certain. But, if I were to accept the Commission's arguments and dismiss the appeal, this would mean the Claimant has never had the opportunity to provide the detailed arguments he said he would provide in support of his claim. He maintains that he met all of the eligibility requirements for Employment Insurance benefits. He says he has evidence to prove his eligibility.

[28] The Claimant should have the opportunity to produce evidence to support his claim and the chance to make his arguments. I am therefore returning this matter to a different member of the General Division for a redetermination of the Claimant's appeal.

Conclusion

[29] I am allowing the appeal and returning the matter to a different member of the General Division for a redetermination.

Janet Lew
Member, Appeal Division