



Citation: *AT v Canada Employment Insurance Commission*, 2022 SST 536

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. T.

Respondent: Canada Employment Insurance Commission
Representative: Anick Dumoulin

Decision under appeal: General Division decision dated March 4, 2022
(GE-22-355)

Tribunal member: Charlotte McQuade

Type of hearing: On the record

Decision date: June 17, 2022

File number: AD-22-171

Decision

[1] The appeal is allowed. The General Division failed to observe a principle of natural justice. The matter is referred back to the General Division for reconsideration by a different General Division member.

Overview

[2] A. T. is the Claimant. The Canada Employment Insurance Commission (Commission) decided he was entitled to 50 weeks of Employment Insurance (EI) regular benefits. The Claimant thought he was entitled to more than 50 weeks. He appealed the Commission's decision to the Tribunal's General Division. The General Division decided the Claimant was only entitled to 50 weeks of benefits.

[3] The Claimant now appeals to the Appeal Division. The Claimant's son, who has the same first and last name as him, represented him at the General Division hearing. Among other arguments, the Claimant says that the General Division acted unfairly when it confused his representative with him.

[4] The Commission agrees that the General Division failed to observe a principle of natural justice. The parties also agree that I should fix this error by referring the matter back to the General Division for reconsideration.¹

[5] I accept that the General Division denied the Claimant the opportunity to be heard and therefore failed to observe a principle of natural justice.² So, I am allowing the appeal.

¹ See AD3 and AD5-1.

² See Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), which says one reason I can intervene in the General Division's decision is where the General Division has failed to observe a principle of natural justice.

The parties agree on the outcome of the appeal

[6] Prior to the hearing of the appeal, the Commission provided submissions agreeing with the Claimant that the General Division had failed to observe a principle of natural justice.

[7] The Commission submits that the audio tape from the General Division hearing reveals that the General Division member was under the impression that she was speaking to the Claimant but was actually speaking to his representative. Because of this, the Claimant didn't have an opportunity to be heard.³

[8] Both parties agree that the appeal should be allowed and the matter referred back to the General Division for reconsideration.⁴

I accept the proposed outcome

[9] I accept that the General Division failed to observe a principle of natural justice.

[10] The Claimant's first and last name and his representative's first and last name were noted to be the same on the Notice of Appeal to the General Division.⁵

[11] The hearing proceeded by way of teleconference. At the start of the hearing, the General Division member asks the Appellant to identify himself. The response is, "This is A. T., acting for the Appellant."⁶

[12] Although the Claimant and the representative have the same first and last name, the General Division member did not confirm whether she was speaking to the Claimant or his representative. The General Division member did not clarify whether there was anyone else on the call. The response provided to the General Division member suggests it was the representative who had identified himself and not the Claimant.

³ See AD3.

⁴ See AD3 and AD5.

⁵ See GD2-7.

⁶ This is what I heard from the Audio Recording of the General Division hearing at approximately 0.00.29.

[13] The General Division member then asks the representative to take a solemn affirmation to tell the truth.⁷ There is no indication in the General Division decision or the audio tape from the hearing that the General Division member had permitted the representative to act as both a representative and a witness. This might have explained why the representative was asked to provide the affirmation.

[14] As the hearing continued, the General Division member appears to be under the impression that she was taking evidence from the Claimant when she was actually speaking to the representative. For example, the member asks if he received benefits from March 2020.⁸ The member also asks if he has worked since March 2020.⁹ The representative did not clarify that he was answering the member's questions as the representative.

[15] The General Division decision refers only to evidence obtained from the Claimant. It does not refer to any evidence obtained from the representative.

[16] The General Division member confused the Claimant with his representative. The General Division member took evidence from the Claimant's representative, understanding she was taking evidence from the Claimant. It is understandable how this error occurred, given that the two share the same name and the fact the hearing proceeded by teleconference. However, the result is that the Claimant did not have an opportunity to provide evidence. The General Division failed to observe a principle of natural justice because the Claimant was denied the opportunity to be heard.¹⁰

[17] To fix this error, I can give the decision that the General Division should have given or I can refer this matter back to the General Division for reconsideration.¹¹

⁷ This is what I heard from the Audio Recording of the General Division hearing at approximately 0.04.32.

⁸ This is what I heard from the Audio Recording of the General Division hearing at approximately 0.07.42 and 0.08.48.

⁹ This is what I heard from the Audio Recording of the General Division at approximately 0.10:10.

¹⁰ See *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at paragraph 28. One principal of procedural fairness is that individuals affected by decisions should have the opportunity to present their case fully and fairly.

¹¹ See section 59(1) of the DESD Act.

[18] Since the Claimant did not have a fair opportunity to provide evidence at the General Division hearing, the record is not complete. So, I cannot decide this matter myself. I agree with the parties that the way to fix the error is to return the matter to the General Division for reconsideration.

Conclusion

[19] The appeal is allowed. The General Division failed to observe a principle of natural justice. The matter is referred back to the General Division for reconsideration by a different General Division member.

Charlotte McQuade
Member, Appeal Division