



Citation: *MG v Canada Employment Insurance Commission*, 2022 SST 661

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** M. G.  
**Representative:** D. F.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Rachel Paquette

---

**Decision under appeal:** General Division decision dated February 24, 2022  
(GE-22-130)

---

**Tribunal member:** Charlotte McQuade

**Type of hearing:** On the record

**Decision date:** July 21, 2022

**File number:** AD-22-204

## Decision

[1] I am allowing the appeal.

[2] The General Division didn't follow a fair process. So, I am sending the appeal back to the General Division for reconsideration.

## Overview

[3] M. G. is the Claimant. The Canada Employment Insurance Commission (Commission) sent the Claimant a decision letter on January 11, 2017, advising that he could not be paid sickness benefits from May 22, 2016, to August 6, 2016, because he had not provided a medical certificate to support his claim.

[4] The Claimant objected to this decision, but he filed his request for reconsideration late, on September 3, 2021. The Commission refused to reconsider the decision as it decided the Claimant did not meet the requirements for an extension of time.<sup>1</sup> The Claimant appealed the Commission's decision refusing him an extension of time to the Tribunal's General Division. The General Division dismissed the Claimant's appeal.

[5] The Claimant is now appealing to the Appeal Division.

[6] I am allowing the appeal. I agree with the parties that the General Division didn't follow a fair process. I am sending the appeal back to the General Division for reconsideration.

---

<sup>1</sup> These requirements are found in section 1 of the *Reconsideration Request Regulations* (R.R. Regulations).

## **The parties agree on the outcome of the appeal**

[7] Before the Appeal Division hearing, the Commission provided arguments accepting that the General Division did not follow a fair process because the General Division:<sup>2</sup>

- failed to clarify with the Claimant whether the person who accompanied him at the hearing was acting as a witness or in some other role.
- failed to explain to the Claimant that he could present evidence through a sworn witness.

[8] The Claimant's representative confirmed that the Claimant agreed with the Commission's position.<sup>3</sup> Both parties agree that I should allow the appeal and that I should return the matter to the General Division for reconsideration.

## **I accept the proposed outcome**

[9] The Commission refused the Claimant an extension of time to pursue a late reconsideration request. The Claimant appealed the Commission's decision to the Tribunal's General Division.

[10] The General Division had to decide whether the Commission had exercised its discretion properly when it denied the Claimant an extension of time.<sup>4</sup> If not, then the General Division had to decide whether the Claimant could have an extension of time.

[11] The General Division held a hearing on February 22, 2022. The General Division decided the Commission had not exercised its discretion properly. So, the General Division then made its own decision about whether the Claimant could have an

---

<sup>2</sup> See AD5-3.

<sup>3</sup> See AD10.

<sup>4</sup> See *Canada (Attorney General) v Purcell*, 1 FCR 644, which explains how a proper exercise of discretion means the decision maker cannot have acted in bad faith or for an improper purpose or motive, considered an irrelevant factor, ignored a relevant factor, or acted in a discriminatory manner.

extension of time. The General Division decided the Claimant did not meet the criteria in the law for allowing an extension.<sup>5</sup>

[12] The Claimant attended the hearing with another person. The audio recording from the hearing reveals that this person began speaking during the hearing. The Claimant asked the General Division member if it was okay that she was talking. The General Division member permitted this but did not clarify with the Claimant whether this person was speaking as a witness or playing some other role, such as a representative or a support person.<sup>6</sup>

[13] At times, this person provided evidence about the Claimant's reasons for the delay in filing his request for reconsideration.<sup>7</sup> However, this individual was never sworn to tell the truth. And there is no reference to her in the decision, or the information she provided.

[14] Although Tribunal hearings are often quite informal, and the General Division member was, in good faith, trying to accommodate the Claimant's request to have someone participate with him, the rules of procedural fairness still have to be respected.<sup>8</sup>

[15] A fair hearing means affected persons must be allowed to present their case and be provided with the opportunity to be heard.<sup>9</sup>

[16] The right to be heard includes the ability to respond to the other party's case, and to present evidence through witnesses.

---

<sup>5</sup> See section 1 of the R.R. Regulations.

<sup>6</sup> This is what I heard from the audio recording of the General Division hearing at approximately 0:18:14.

<sup>7</sup> For example, I heard some instances of this from the audio recording of the General Division hearing, at approximately 0:18:54 to 0:21:10 and at 0:21:41 and 0:24:28.

<sup>8</sup> *Kohazi v Canada (Citizenship and Immigration)*, 2015 FC 705, expresses this principle.

<sup>9</sup> See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), which explains this principle.

[17] To be able to exercise that right, a fair hearing requires that the parties understand the Tribunal procedures including the possibility of presenting sworn evidence through a witness.<sup>10</sup>

[18] By not clarifying the participant's role and by not explaining to the Claimant that he could present sworn evidence through a witness, the Claimant's right to be heard was compromised.

[19] Because the General Division didn't follow a fair process, I can intervene in this case.<sup>11</sup>

[20] The parties agree that I should send this appeal back to the General Division for reconsideration.<sup>12</sup>

[21] I agree. The Claimant did not have a full and fair opportunity to present his case. So, I need to send the appeal back to the General Division so it can reconsider the case.

## **Conclusion**

[22] The appeal is allowed.

[23] The General Division didn't follow a fair process. The appeal is sent back to the General Division for reconsideration.

Charlotte McQuade  
Member, Appeal Division

---

<sup>10</sup> See *Nemeth v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 590, which explains this principle.

<sup>11</sup> Section 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act) gives me this authority.

<sup>12</sup> Section 59(1) of the DESD Act explains the remedies available to the Appeal Division.