



Citation: *CO v Canada Employment Insurance Commission*, 2022 SST 621

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

# **Decision**

**Appellant:** C. O.  
**Representative:** Stephen Thorne

**Respondent:** Canada Employment Insurance Commission  
**Representative:** J. Villeneuve

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**Decision under appeal:** General Division decision dated March 7, 2022  
(GE-22-269)

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**Tribunal member:** Charlotte McQuade

**Type of hearing:** Teleconference  
**Hearing date:** July 6, 2022  
**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** July 11, 2022  
**File number:** AD-22-181

## Decision

[1] I am allowing the appeal.

[2] The General Division didn't follow procedural fairness. So, I am sending the appeal back to the General Division for reconsideration by a different General Division member.

## Overview

[3] C. O. is the Claimant. After receiving 15 weeks of Employment Insurance (EI) sickness benefits, she asked for EI regular benefits. The Canada Employment Insurance Commission (Commission) decided that the Claimant was not entitled to regular benefits from August 15, 2021, because she couldn't prove she was available for work.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division dismissed the Claimant's appeal. The Claimant is now appealing to the Appeal Division.

[5] I am allowing the appeal. I agree with the parties that the General Division didn't follow procedural fairness. I am sending the appeal back to the General Division for reconsideration.

## The parties agree on the outcome of the appeal

[6] Before the appeal hearing, the Commission provided submissions (arguments) conceding (accepting) that the General Division breached procedural fairness by **not** doing these two things:<sup>1</sup>

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<sup>1</sup> See AD3-2.

- a) clarifying with the Claimant whether she was ready to continue with her hearing without her named representative
- b) explaining to the Claimant she could ask the General Division to change her hearing to another date (ask for an adjournment).

[7] At the hearing, the Claimant agreed with the Commission's concession. Both parties agree that I should allow the appeal and that the remedy for the error is to return the matter to the General Division for reconsideration.

### **I accept the proposed outcome**

[8] I accept that the General Division did not follow procedural fairness.

[9] The Commission decided the Claimant was not entitled to benefits from August 15, 2021. The Claimant had to prove she was available for work to be entitled to EI regular benefits.<sup>2</sup>

[10] The General Division held a hearing on February 28, 2022. On March 7, 2022, it decided that the Claimant had not proven she was available for work.<sup>3</sup>

[11] The Claimant noted on the notice of appeal filed with the General Division that she had a representative.<sup>4</sup> The Tribunal communicated with her representative during the General Division process, providing him correspondence and the notice of hearing.<sup>5</sup> The Claimant's representative before the General Division is the same representative before the Appeal Division.

[12] The Claimant's representative did not attend the General Division hearing. Although a family member tried to step in at the last minute, the General Division treated this person as a witness instead.<sup>6</sup>

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<sup>2</sup> This requirement is set out in section 18(1)(a) of the *Employment Insurance Act* (EI Act).

<sup>3</sup> See General Division decision at AD1A-1 to AD1A-5.

<sup>4</sup> See GD2-7.

<sup>5</sup> See GD1-1.

<sup>6</sup> See General Division decision at AD1A-1.

[13] The General Division member did not confirm with the Claimant whether she was ready to continue proceed without her named representative. It also did not explain the option of asking for an adjournment.<sup>7</sup>

[14] In the circumstances, the parties agree that, to provide a fair process, the General Division should have asked whether the Claimant was ready to go ahead. It should have also told the Claimant that her hearing could be rescheduled.

[15] I accept this agreement. Although Tribunal hearings are often quite informal, the rules of procedural fairness still have to be respected.<sup>8</sup> If a party has a named representative who does not attend, an enquiry should be made to see whether the claimant is ready to continue without that representative. For a fair hearing, it is also important that the parties understand the Tribunal procedures including the option of asking for an adjournment.<sup>9</sup>

[16] Because the General Division didn't follow procedural fairness, I can intervene in this case.<sup>10</sup>

## **Remedy**

[17] The parties agree that I should send this appeal back to the General Division for reconsideration.<sup>11</sup>

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

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<sup>7</sup> This is from the audio recording of the General Division hearing at approximately 0:2:06 to 0:4:30.

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

<sup>9</sup> See, for example, another decision from the Tribunal's Appeal Division, *BS v CEIC*, 2019 SST 511. Also, *Kainz v Potter*, 2006 CanLII 20532 (ON SC) says the duty of fairness may include directions on procedure including requests for adjournments.

<sup>10</sup> Section 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act) gives me this authority.

<sup>11</sup> Section 59(1) of the DESD Act explains the remedies available to the Appeal Division.

## **Conclusion**

[19] The appeal is allowed.

[20] The General Division didn't follow procedural fairness. The appeal is sent back to the General Division for reconsideration by a different General Division member.

Charlotte McQuade  
Member, Appeal Division