



Citation: *FI v Canada Employment Insurance Commission*, 2022 SST 797

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: F. I.
Respondent: Canada Employment Insurance Commission
Representative:

Decision under appeal: General Division decision dated February 14, 2022
(GE-21-2281)

Tribunal member: Melanie Petrunia
Type of hearing: Videoconference
Hearing date: August 10, 2022
Hearing participant: Respondent's representative
Decision date: August 21, 2022
File number: AD-22-191

Decision

[1] The appeal is allowed. The matter will go back to the General Division for reconsideration.

Overview

[2] The Appellant, F. I. (Claimant) applied for employment insurance (EI) benefits on December 11, 2020. He did not provide a Record of Employment (ROE) when he applied. The Respondent, the Canada Employment Insurance Commission (Commission) received a copy of the Claimant's ROE on July 22, 2021.

[3] The Commission decided that the Claimant did not have good cause for the delay providing his ROE so he could not receive benefits from December 7, 2020 to July 22, 2021. The Claimant appealed to the General Division.

[4] The General Division dismissed the Claimant's appeal. It found that the Claimant did not have good cause for submitting the ROE late. The Claimant is now appealing the General Division decision to the Appeal Division. He argues that the General Division failed to provide a fair process, made errors of law and jurisdiction and based its decision on an important error of fact.

[5] I have decided that the General Division failed to provide a fair process by not adjourning the hearing. I am returning the matter to the General Division for reconsideration.

Preliminary matters

[6] Appellant did not attend the hearing. He spoke with a navigator at the Tribunal after he received the decision granting leave to appeal. He said that he did not want to deal with the Tribunal and the member should make a decision.¹

¹ See telephone log dated July 6, 2022.

[7] The Commission filed its representations after this conversation. The Commission stated that the General Division made an error and the matter should be sent back to the General Division for reconsideration.

[8] A letter was sent to the Claimant asking if he agreed with the Commission's position or still wished to have a hearing.² He did not reply by the deadline. The hearing was held at the scheduled time and the Claimant did not attend. I am satisfied that the Claimant received the Notice of Hearing.

Issues

[9] I have focused on the following issues in this appeal:

- a) Did the General Division fail to provide a fair process by not adjourning the hearing?
- b) If so, how should the error be fixed?

Analysis

[10] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:³

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

² See AD4.

³ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

The General Division decision

[11] The General Division addressed a few items in the decision as preliminary matters. First, it acknowledged that the Claimant asked for an in-person hearing and, when told that this was not an option due to the pandemic, he asked for a videoconference hearing at Service Canada. The General Division explained that this was also not an option and that it decided to schedule a teleconference hearing.⁴

[12] The General Division also discussed the Claimant's request that the member remove herself from the file and that the matter be heard by another member. The General Division explained why it denied this request.⁵

[13] Finally, the General Division discussed the Claimant's request for an adjournment at the hearing. The member stated that she advised the Claimant that she would consider adjourning in order to determine if an in-person hearing could be held.⁶

[14] The General Division states that the Claimant refused to answer any other questions at the hearing and hung up. The General Division considered that the Claimant wanted an adjournment so that another member could hear the appeal. Because she had decided that she would not remove herself, the General Division decided to proceed to render a decision.⁷

The General Division failed to provide a fair process by not adjourning the hearing

[15] I have listened to the hearing before the General Division. In it, the member confirmed with the Claimant that he was asking for an adjournment to have the matter heard on another day.⁸ He said that he wanted it heard by a different member because

⁴ General Division decision at paragraphs 8 and 9.

⁵ General Division decision at paragraph 14.

⁶ General Division decision at paragraph 15.

⁷ General Division decision at paragraph 16.

⁸ Recording of the hearing before the General Division at 13:57.

he had privacy concerns about proceeding with a teleconference and this form of hearing was decided without his consent.⁹

[16] The General Division member explained that it did not need his consent to decide on the method of hearing. It explained that the Tribunal asks claimants for their preference and tries to accommodate it.¹⁰ The General Division explained that it had written to the Claimant to advise that an in-person hearing was not available due to the pandemic and offered videoconference or teleconference instead.

[17] The General Division member asked if there was a reason that the Claimant could not proceed by teleconference.¹¹ The Claimant referred to privacy concerns a number of times during the hearing. The General Division asked him to explain and he mentioned concerns that a teleconference could be intercepted.¹² I note that the Claimant raised similar privacy concerns in his Notice of Appeal, including concerns that neighbours have pretended on the phone to be Service Canada agents.¹³

[18] The General Division member stated that she did not know if the Tribunal could offer an in-person hearing but that she was prepared to adjourn and look into it.¹⁴ The General Division declined to have the matter heard by another member. She said that she would keep the file, adjourn the matter and look into whether or not they could proceed in-person.¹⁵

[19] The Claimant stated that he would not answer any further questions.¹⁶ The General Division member stated that she was adjourning the case.¹⁷ The Claimant then apologized and hung up, which ended the hearing.

⁹ Recording of the hearing before the General Division at 14:35.

¹⁰ Recording of the hearing before the General Division at 15:00.

¹¹ Recording of the hearing before the General Division at 15:20.

¹² Recording of the hearing before the General Division at 17:30.

¹³ See GD2-5.

¹⁴ Recording of the hearing before the General Division at 18:50.

¹⁵ Recording of the hearing before the General Division at 19:50.

¹⁶ Recording of the hearing before the General Division at 19:55.

¹⁷ Recording of the hearing before the General Division at 20:25.

[20] The last thing that the General Division said to the Claimant before he hung up was “I am adjourning the case to look into whether or not we can accommodate your request”.¹⁸

[21] The Commission says that the General Division failed to observe a principle of natural justice because the member told the Claimant that she was adjourning the hearing. This means that the adjournment was granted. It argues that a new hearing date should have been set.

[22] I agree. I find that the General Division did not provide a fair process. It told the Claimant that the matter was adjourned then it decided to proceed to make a decision. This was a breach of procedural fairness and the Claimant did not have an opportunity to fully present his case.

Remedy

[23] I have found that the General Division made an error. Now, I have the authority to make the decision that the General Division should have made or I can refer the matter back to the General Division for reconsideration.¹⁹

[24] The Commission argues that I should allow the appeal and return the matter to the General Division for reconsideration. I agree. I find that the record is not complete. The Claimant did not have an opportunity to fully present his case.

[25] I have found that the General Division failed to provide a fair process when it did not adjourn the hearing as it told the Claimant it would. The Claimant should have the opportunity to participate in a hearing before the General Division.

[26] I am sending the matter back to the General Division for reconsideration to allow the Claimant the opportunity to fully present his case.

¹⁸ Recording of the hearing before the General Division at 20:25.

¹⁹ This authority is set out in sections 59(1) and 64(1) of the DESDA.

Conclusion

[27] The appeal is allowed. The General Division failed to provide a fair process. The matter is returned to the General Division for reconsideration.

Melanie Petrunia
Member, Appeal Division