



Citation: *AP v Canada Employment Insurance Commission*, 2022 SST 1146

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. P.
Representative: S. P.

Respondent: Canada Employment Insurance Commission
Representative: Angèle Fricker

Decision under appeal: General Division decision dated June 17, 2022
(GE-22-1305)

Tribunal member: Janet Lew

Type of hearing: Teleconference
Hearing date: November 2, 2022
Hearing participants: Appellant's representative
Respondent's representative

Decision date: November 2, 2022
File number: AD-22-432

Decision

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

Overview

[2] The Appellant, A. P. (Claimant), is appealing the General Division decision. The General Division summarily dismissed the Claimant's appeal because it found that the appeal was bound to fail and that no evidence nor any arguments could have changed the outcome of the appeal.

[3] The General Division stated that it notified the Claimant of its intention to summary dismiss the appeal. It asked the Claimant to respond by June 14, 2022. The General Division found that the Claimant had not responded by this date.

[4] The General Division found that the Claimant was initially suspended and then dismissed from her job because of misconduct. She was aware of her employer's vaccination policy. She chose not to comply with the policy, knowing what the consequences could be if she did not comply. The General Division found that this amounted to misconduct.

[5] The Claimant submits that the General Division should have given her the chance to present evidence and argue her case. She argues that both the Respondent, Canada Employment Insurance Commission (Commission) and the General Division misinterpreted what misconduct means. She says that, if they had not made this error, they would have found that there was no misconduct in her case.

[6] The Claimant argues that her employment contract governed the entire relationship with her employer. She says that, as her contract did not require her to get vaccinated, she did not breach any duties that she owed to her employer. She says she fulfilled all of her duties. So, for that reason, she says there was no misconduct.

[7] The Commission argues that the Claimant's case was "preordained," no matter what evidence or arguments she might have made. 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

[8] The Commission notes that the Claimant had filed arguments with the General Division on June 12, 2022.¹

[9] The Commission says that clearly, the General Division was unaware of and therefore did not consider the Claimant's arguments. After all, the General Division wrote that, "I asked her to respond by June 14, 2022. The Claimant did not provide a written response by the date of this decision,"² when in fact she had provided a response.

[10] The Commission argues that the Claimant's arguments to the General Division still do not change the outcome. The Commission says that, even if the General Division had been aware of and had considered the Claimant's arguments, it still would have summarily dismissed the appeal.

[11] Even so, the Commission says that it does not oppose returning the matter to the General Division for consideration.

[12] The Claimant prefers to proceed with the hearing of the appeal at the Appeal Division. She argues that the evidence shows that there was no misconduct. However, if I were to go ahead with the appeal and decide whether there was misconduct, this would involve hearing evidence and arguments for the first time. This is not the role of the Appeal Division.

¹ See Claimant's arguments, at GD7.

² See General Division decision, at para 15.

Issue

[13] The issues in this appeal are:

- a) Did the General Division make a procedural error?
- b) Did the General Division make an error by summarily dismissing the Claimant's appeal?

Analysis

[14] 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 make a procedural error?

[15] The parties agree that the General Division made a procedural error. The General Division should have considered the Claimant's arguments. The Claimant had filed her arguments on time. They addressed the issues that she raised in her appeal.

Remedy

[16] The Commission says the Claimant's arguments would not have changed the outcome at the General Division. The Commission says the General Division would have summarily dismissed the appeal, even if it had considered the Claimant's arguments. However, in the interests of justice, the Commission does not oppose returning the matter to the General Division.

[17] The Claimant would prefer to come to a final determination in her favour. She would prefer a ruling by the Appeal Division that she is entitled to Employment Insurance benefits. However, as I noted above, this is not appropriate for the Appeal Division at this time, until after a full airing of the evidence and arguments at the General Division.

[18] The Claimant also asks the Appeal Division to order the General Division to hold a full hearing in this matter, rather than face another summary dismissal. It is clear that

the Claimant feels that she would benefit from a hearing. She has more evidence and more arguments that she would like to make.

[19] The General Division failed to consider the Claimant's evidence and arguments. In the interests of justice, and so as not to place the administration of justice into disrepute, the appropriate remedy is to return the matter to the General Division for a redetermination, so it can consider all the evidence and arguments before it.

[20] I am also recommending that the General Division offer the Claimant a hearing, given the nature of the issues involved, and the fact that this will give the Claimant a chance to fully and fairly present her case.

Conclusion

[21] 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