



[TRANSLATION]

Citation: *MB v Canada Employment Insurance Commission*, 2022 SST 1411

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. B.

Respondent: Canada Employment Insurance Commission
Representative: Julie Meilleur

Decision under appeal: General Division decision dated
July 29, 2022 (GE-21-2332)

Tribunal member: Pierre Lafontaine

Type of hearing: On the record

Decision date: December 5, 2022

File number: AD-22-639

Decision

[1] The appeal is allowed. The file returns to the General Division for reconsideration.

Overview

[2] On September 4, 2020, the Appellant (Claimant) stopped working because of the pandemic. He applied for Employment Insurance (EI) benefits on August 17, 2021. On August 18, 2021, the Respondent (Commission) denied him EI benefits because he did not have enough hours of insurable employment in his qualifying period from August 9, 2020, to August 7, 2021. It decided that he had worked 391 hours during that period, but he needed to have worked 420 hours to qualify. The Commission also denied him an antedate to September 27, 2020, since it determined that he had not shown good cause for delaying his application for the entire period.

[3] The Claimant asked the Commission to reconsider, alleging that he had worked 640 hours that were not paid. He mentioned appealing to the Tax Court of Canada (TCC). The Commission asked him to submit evidence of his appeal to the TCC. He did not respond. Because of this, the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[4] The General Division noted that the Claimant had not provided evidence of his appeal to the TCC. It found that the Claimant had not shown that he had enough hours to qualify for EI benefits. It also found that he had not shown that he had good cause for the delay throughout the entire period of the delay. So, there was no reason to grant an antedate to September 27, 2020.

[5] The Claimant was granted leave to appeal the General Division decision. He argues that the General Division did not respect his choice to have an in-person hearing. He argues that the General Division made a decision without letting him have his witnesses testify and without giving him the chance to provide documents.

[6] I have to decide whether the General Division failed to observe a principle of natural justice.

[7] I am allowing the Claimant's appeal. The file returns to the General Division for reconsideration.

Issue

[8] Did the General Division fail to observe a principle of natural justice?

Analysis

Appeal Division's mandate

[9] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

[10] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, I must dismiss the appeal.

Did the General Division fail to observe a principle of natural justice?

[12] The Claimant argues that the General Division did not respect his choice to have an in-person hearing. He argues that the General Division made a decision without letting him have his witnesses testify and without giving him the chance to provide documents.

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[13] On December 8, 2021, the General Division told the Claimant that, because of the pandemic, there were no in-person hearings for the time being. It said that, in the meantime, his file had been placed in abeyance.²

[14] On January 9, 2022, the Claimant told the General Division that it was impossible to reach him by telephone. He did not want to get any emails, and all correspondence had to be sent to him by Xpresspost, without a signature.

[15] On March 18, 2022, in light of the pandemic restrictions and because the Claimant had no other means of communication, the General Division opted for a question and answer hearing. It sent the Claimant a notice of hearing with questions to be answered by April 18, 2022.

[16] On April 1, 2022, the notice of hearing containing the questions was returned to the General Division, having not been delivered to the Claimant.³ Despite this, on July 29, 2022, the General Division proceeded to make its final decision.

[17] The Commission does not object to the file being sent back to the General Division if the Appeal Division finds that the General Division failed to observe a principle of natural justice.

[18] The concept of “natural justice” includes the claimant’s right to a fair hearing. A fair hearing assumes proper notice of the hearing, the opportunity to be heard, the right to know what is being alleged against the party, and the opportunity to respond to those allegations.

[19] I am not indifferent to the General Division’s challenges communicating with the Claimant. However, I note that the notice of hearing was returned to the General Division as undelivered before the General Division made a final decision. So, the Claimant did not have the opportunity to be heard or to respond to the Commission’s allegations.

² See GD5-1.

³ See GD1-1 to GD1-3.

[20] In light of the Claimant's arguments and of the reasons provided above, I am of the view that the appeal must be allowed. So, the file should be returned to the General Division for reconsideration.

Conclusion

[21] The appeal is allowed. The file returns to the General Division for reconsideration.

Pierre Lafontaine
Member, Appeal Division