



Citation: *LW v Canada Employment Insurance Commission*, 2022 SST 1389

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** L. W.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** A. Dumoulin

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**Decision under appeal:** General Division decision dated June 6, 2022  
(GE-22-808)

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**Tribunal member:** Melanie Petrunia

**Type of hearing:** Teleconference

**Hearing date:** October 19, 2022

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** November 20, 2022

**File number:** AD-22-410

## Decision

[1] The appeal is allowed. The General Division did not provide a fair process when it refused the Claimant's request for an adjournment.

[2] The matter is returned to the General Division for reconsideration.

## Overview

[3] The Appellant, L. W. (Claimant), worked from home as a decision support consultant with a hospital. The employer dismissed the Claimant on October 22, 2021 because she did not comply with the COVID-19 vaccination policy (policy) at work. The Claimant then applied for EI regular benefits.

[4] The Respondent, the Canada Employment Insurance Commission (Commission) determined that the Claimant was dismissed from her job because of her misconduct so it was not able to pay her benefits. The Claimant requested a reconsideration but the Commission maintained its decision. The Claimant appealed to the Tribunal's General Division.

[5] The General Division found that the Claimant was dismissed following her refusal to follow the employer's policy. It found that the Claimant knew that the employer was likely to dismiss her in these circumstances. The General Division concluded that the Claimant was dismissed from her job because of misconduct.

[6] The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division. She argues that the General Division failed to provide a fair process, made an error of law and based its decision on an erroneous finding of fact.

[7] I have I have decided that the General Division failed to provide a fair process. I am sending the matter back to the General Division for reconsideration.

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

[8] In its written submissions, the Commission stated that the General Division erred by not adjourning the hearing when requested by the Claimant. It said that the matter should be sent back to the General Division for a new hearing.<sup>1</sup>

[9] The Claimant still wanted to proceed with the hearing rather than returning to the General Division for a new hearing.<sup>2</sup> However, at the hearing, the parties agreed that the General Division failed to provide a fair process by not adjourning the hearing. The parties also agreed that the matter should be sent back to the General Division so that the Claimant would have an opportunity to fully present her case.

## **I accept the proposed outcome**

[10] I agree with the parties that the General Division failed to provide a fair process.

[11] The Claimant wrote to the Tribunal on May 30, 2022 to request an adjournment of her hearing, scheduled on June 1, 2022.<sup>3</sup> In her request, she stated that her lawyer had informed her that day that a mediation with her former employer would be going ahead on June 22, 2022. She asked that the hearing be adjourned pending the outcome of the mediation.

[12] The General Division refused the Claimant's adjournment request.<sup>4</sup> She was informed on the morning of the hearing, shortly before it began. The Claimant argues that she was unprepared for the hearing. She says that the outcome of the mediation could have impacted on her appeal, and possibly led to a withdrawal.

[13] The Commission agrees that there was a breach of natural justice when the General Division denied the Claimant's adjournment request. It argues that the outcome of the mediation could have impacted the Claimant's appeal.

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<sup>1</sup> AD3-4

<sup>2</sup> AD5

<sup>3</sup> GD8

<sup>4</sup> GD9

[14] I agree that the Claimant's matter should have been adjourned pending the outcome of the mediation, which was scheduled only 3 weeks later.

[15] Because I cannot accept new evidence about the outcome of the Claimant's mediation with her employer, I agree with the parties that the matter must return to the General Division for a new hearing.

## **Conclusion**

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

Melanie Petrunia  
Member, Appeal Division