



Citation: *DC v Canada Employment Insurance Commission*, 2023 SST 379

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: D. C.
Representative: P. C.

Respondent: Canada Employment Insurance Commission
Representative: Gilles-Luc Bélanger

Decision under appeal: General Division decision dated January 5, 2023
(GE-22-4002)

Tribunal member: Janet Lew

Type of hearing: In Writing
Decision date: April 4, 2023
File number: AD-23-47

Decision

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

Overview

[2] The Appellant, D. C. (Claimant), is appealing the General Division decision of January 5, 2023. The General Division denied the Claimant's application to rescind or amend its original decision of October 21, 2022.¹ The General Division found that the Claimant did not file any new facts that were decisive and would have affected or changed its original decision. This meant that the Claimant continued to be disentitled from receiving Employment Insurance benefits.

[3] The Claimant argues that the General Division made procedural and legal errors. She argues that the General Division acted unfairly by not following its own procedures. She says that the General Division issued a decision without waiting for the deadline it set for her to file documents to pass. She also argues that the General Division did not follow the law when it decided that her employer suspended her from her employment because of misconduct.

The parties agree on the outcome of the appeal

[4] The Respondent, the Canada Employment Insurance Commission (Commission), agrees that the General Division issued its decision without waiting for the end of the 30-day period granted to the parties to submit documents. The Commission agrees that the General Division failed to observe a principle of natural justice by not waiting for the 30-day period to lapse.

[5] The Commission asks the Appeal Division to send the matter back to the General Division for reconsideration.

¹ The Claimant filed her application to rescind or amend the General Division decision on November 28, 2022, before legislation repealed the rescind or amend provisions of the *Department of Employment and Social Development Act* on December 5, 2022.

[6] The Claimant agrees that the appeal be allowed without the need for a hearing, and that the matter be returned to the General Division.

I accept the proposed outcome

[7] The General Division had given the parties 30 days after December 19, 2022, within which they could file any additional documents or submissions.

[8] The Claimant filed documents with the Social Security Tribunal on January 5, 2023. She did not tell the Tribunal that she was ready to proceed with the matter or that she would not be filing any additional records or arguments. The Claimant understood and expected that she still had more time to file any additional documents and submissions.

[9] Before the 30-day filing period passed, the General Division issued its decision.

[10] The Claimant says that she may have had additional records and submissions to file. She also claims that the General Division failed to consider the documents that she filed on January 5, 2023, although she filed them before the expiry of the 30-day filing period. She says the General Division did not refer to these documents in its decision.

[11] I agree with the parties that the General Division failed to observe a principle of natural justice by not waiting for the 30-day filing period to lapse. The appropriate remedy in these circumstances is to return the matter to the General Division for a redetermination.

[12] It is unnecessary to address the balance of the Claimant's arguments that the General Division made legal errors as the application to rescind or amend will be considered anew by the General Division.

Conclusion

[13] The appeal is allowed. The General Division failed to observe a principle of natural justice. The matter will go back to the General Division for a redetermination of the Claimant's application to rescind or amend the General Division decision of October 21, 2022.

Janet Lew
Member, Appeal Division