



Citation: *AM v Canada Employment Insurance Commission*, 2023 SST 578

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. M.
Representative: J. K.

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

Decision under appeal: General Division decision dated November 9, 2022
(GE-22-2684)

Tribunal member: Janet Lew

Type of hearing: In Writing
Decision date: May 4, 2023
File number: AD-23-225

Decision

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

Overview

[2] The Appellant, A. M. (Claimant), is appealing the General Division decision. The General Division determined that the appeal did not have a reasonable chance of success and therefore summarily dismissed the matter.

[3] The General Division found that the Claimant had been suspended for misconduct, which meant that she was disentitled from receiving Employment Insurance benefits. The Claimant had not complied with her employer's vaccination policy.

[4] The General Division did not hold a hearing to address the misconduct issue. The General Division found that it would have made no difference if the Claimant presented new evidence or made other arguments. The General Division determined that the Claimant's appeal had no reasonable chance of success in that the appeal was bound to fail.

[5] The Claimant argues that the General Division made errors of jurisdiction, errors of mixed fact and law, errors of fact, and errors of law. The Claimant also argues that the General Division failed to observe a principle of natural justice by ignoring the Claimant's legitimate expectations that she would receive Employment Insurance benefits.

[6] The Respondent, the Canada Employment Insurance Commission (Commission), agrees that the General Division erred in law in determining that the appeal had to be summarily dismissed. The Commission asks the Appeal Division to allow the appeal and to send the matter back to the General Division for reconsideration.

[7] The Claimant does not oppose sending the matter back to the General Division. However, the Claimant seeks costs against the Commission and asks for an oral hearing to speak to the issue.

The parties agree on the outcome of the appeal

[8] The parties agree that the General Division erred in determining that the appeal had to be summarily dismissed. They agree that the appeal should be allowed.

[9] The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.¹

[10] The General Division found that it was clear from the record that the Claimant's appeal did not have any reasonable chance of success and that the appeal was bound to fail, no matter what arguments or evidence she could bring to a hearing. For that reason, it summarily dismissed the Claimant's appeal.

[11] The Commission notes that the Federal Court of Appeal has held that an appeal should only be summarily dismissed when it is obvious that the appeal is bound to fail no matter what evidence or arguments might be presented at a hearing.

[12] The Commission argues that the Claimant's case is unlike those cases where an appeal is bound to fail. Cases where an appeal is clearly bound to fail include ones in which a claimant does not meet the qualifying conditions, has insufficient insurable hours, or has reached the maximum number of weeks paid for sickness benefits.

[13] The Commission argues that appeals of misconduct cases are not clearly bound to fail because there could be evidence or arguments submitted at a hearing that could change the outcome. In this regard, I note that the Claimant has provided extensive submissions, the nature of which should have been considered by the General Division at the first instance. So, the Commission says that it was not appropriate for the General Division to have summarily dismissed the matter.

¹ Section 53 of the *Department of Employment and Social Development Act*.

[14] The Commission asks the Appeal Division to allow the appeal and to send the matter back to the General Division for reconsideration. The Claimant does not oppose having the matter sent back to the General Division.

I accept the proposed outcome

[15] I agree that returning the matter to the General Division is the appropriate remedy. It is clear that the claimant has more evidence and arguments to present. It would be unfair to deprive the Claimant of the chance to fully present her case.

There will be no order for Costs

[16] The Claimant is also seeking costs of the application. She argues that costs against the Commission are appropriate because it had argued at the General Division that there was misconduct. The Claimant says this led the General Division to summarily dismiss the appeal. She says that she incurred costs from having to hire counsel to represent her in her appeal at the Appeal Division.

[17] The Claimant argues that the Appeal Division has the discretionary authority to award costs. I am not convinced that the Appeal Division has this authority.

[18] The Appeal Division is a statutory creature and, as such, has only the powers that were specifically delegated to it or that are a direct result of the powers so delegated.

[19] As the Federal Court of Appeal held in *Mudie v Canada (Attorney General)*,² an administrative tribunal cannot exceed its statutory grant of power. The Court found that the Appeal Division could reasonably conclude in that case that it did not have the authority to order costs or damages, among other things.

[20] I decline to award any costs.

² See *Mudie v Canada (Attorney General)*, 2021 FCA 239 at para 24.

Conclusion

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

Janet Lew
Member, Appeal Division