



Citation: *GM v Canada Employment Insurance Commission*, 2023 SST 537

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: G. M.

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

Decision under appeal: General Division decision dated December 26, 2023
(GE-22-3183)

Tribunal member: Stephen Bergen

Type of hearing: In writing
Date of decision: April 26, 2023

File number: AD-23-110

Decision

[1] I am allowing the appeal. I am returning the matter to the General Division for a new oral hearing with the assistance of a Tigrinya language interpreter.

Overview

[2] G. M. is the Appellant, and also the claimant for Employment Insurance benefits. I will refer to him as the Claimant. The Claimant attended a training program beginning on January 13, 2021. The Respondent, the Canada Employment Insurance Commission (Commission), found that the Claimant was not available for work during the time he attended the training. It decided that the Claimant was not entitled to receive Employment Insurance (EI) benefits, beginning on January 25, 2021.

[3] The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal). The General Division agreed with the Commission and dismissed the appeal.

The parties agree on the outcome of the appeal

[4] When the Claimant appealed to the Appeal Division of the Tribunal, he requested a video-conference hearing from a Service Canada location. The Appeal Division scheduled a hearing according to the Claimant's preference. After this, the Appeal Division received the Commission's submissions. As part of the Commission's submissions, it conceded that the General Division made an error. It asked that the matter be returned to the General Division for reconsideration.

[5] Because of the Commission's concession, I scheduled a case conference in advance of the hearing. At the case conference, it became apparent that all parties agreed that the General Division had made some sort of error that was related to the Claimant's communication difficulties and the absence of an interpreter. Both parties agreed that there should be a new hearing.

I accept the proposed outcome

[6] In light of the parties' agreement, I transformed the case conference to a settlement conference, and I accepted the parties' agreement. This agreement was consistent with my own assessment of the General Division hearing.

[7] The issues in this appeal were whether the General Division made an error related to the Claimant's language difficulties by

- 1) Misunderstanding relevant evidence, or
- 2) Failing to obtain a Tigrinya interpreter.

[8] The Claimant said that the General Division had not understood him correctly. He stated that he told the General Division that his availability for work was limited to Saturdays, but that he was talking about the time he was recovering from chemotherapy. He said that the General Division did not understand he had been referring to the period in which he was on sickness benefits.

[9] The Claimant says that this misunderstanding and others like it arose due to a language barrier. He believes he should have had an interpreter.

[10] I have listened to the General Division audio recording. It is obvious that the Claimant had difficulty understanding the General Division member and making himself understood. In particular, it sounds as though the General Division misunderstood what he was trying to say about his availability for work on Saturdays. The General Division relied on this evidence to find that the Claimant was not available for work.

[11] I accept that the Claimant had difficulty making himself understood owing to language difficulties. I also accept that the General Division member based its decision on findings that likely misunderstood some of the Claimant's evidence.

[12] I agree with the parties that the General Division made an error. Given the circumstances, it was procedurally unfair for it to proceed with the hearing.¹ If the General Division could not clarify the Claimant's evidence in any other way, it should have adjourned to obtain the assistance of a Tigrinya interpreter.

[13] The Commission was explicit that the matter should be returned to the General Division and the Claimant was agreeable. The Claimant stated in his application to the Appeal Division that he wanted "the decision on [his] my case be reviewed, and my side of the story heard properly through a professional translator."

[14] Although I have the power to make the decision that the General Division should have made, I agree that the matter should be returned to the General Division for a new hearing.² I cannot replace the General Division decision with my own decision, because I cannot be sure that I understand the evidence from the audio recording of the General Division hearing. I do not have confidence that the Claimant always understood the General Division's questions or that I understand his responses.

Conclusion

[15] I am allowing the appeal. The General Division made an error of procedural fairness by proceeding with significant communication difficulties.

[16] I am returning the matter to the General Division for reconsideration. I direct the General Division to schedule a new oral hearing and to arrange for the attendance at that hearing of a Tigrinya interpreter.

Stephen Bergen
Member, Appeal Division

¹ Section 58(1) of the *Department of Employment and Social Development Act* (DESDA) authorizes the Appeal Division to consider only those errors that fall within one of the certain identified grounds of appeal. One of those errors is an error of procedural fairness.

² See section 59(1) and section 64 of the *Department of Employment and Social Development Act*