



Citation: *CK v Canada Employment Insurance Commission*, 2023 SST 604

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: C. K.

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

Decision under appeal: General Division decision dated September 16, 2022
(GE-22-1548)

Tribunal member: Solange Losier

Type of hearing: In Writing

Decision date: May 18, 2023

File number: AD-23-245

Decision

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

Overview

[2] C. K. is the Claimant in this case. She applied for Employment Insurance (EI) benefits after she stopped working.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant could not get EI benefits because she was suspended from her job due to misconduct.¹ The Claimant appealed that decision to the General Division.

[4] The General Division decided that the appeal had no reasonable chance of success.² It summarily dismissed the appeal without holding a hearing.³

[5] The Claimant appealed that decision to the Appeal Division.⁴ She says that the General Division made an error of law, error of fact, and did not follow procedural fairness when it summarily dismissed her case.⁵ She argues that she should have an opportunity to present her case.

[6] The Commission agrees that the General Division made an error of law when it summarily dismissed the Claimant's appeal.⁶

¹ See the reconsideration decision at pages GD3-78 to GD3-79.

² Section 53 of the of the *Department of Employment and Social Development Act* (DESD Act) was in effect when this appeal was summarily dismissed, but it was repealed on December 5, 2022.

³ See the General Division decision at pages AD1A-1 to AD1A-7.

⁴ See the Application to the Appeal Division at pages AD1-1 to AD1-6.

⁵ See sections 58(1)(a)(b)(c) of the DESD Act.

⁶ See the Commission's submissions at pages AD2-1 to AD2-4.

The parties agree on the outcome of the appeal

[7] The Commission agrees that the General Division made an error of law when it summarily dismissed the Claimant's appeal.⁷ It recognizes that the appeal was not hopeless and that it should not have been decided without a hearing.

[8] The Commission says that the appeal should be allowed and the case should be sent back to the General Division for reconsideration.⁸

[9] The Claimant agrees that the case should be sent back to the General Division for reconsideration.⁹

I accept the proposed outcome

[10] I can intervene because I agree that the General Division made an error of law when it decided to summarily dismiss the appeal.¹⁰

[11] The law at the time permitted for the General Division to summarily dismiss an appeal if it was satisfied that it had no reasonable chance of success.¹¹ The Federal Court confirmed that the standard for summary dismissal is high. The test is whether the appeal before the General Division was bound to fail no matter what evidence or arguments might have been presented at the hearing.¹²

[12] The Claimant wants a chance to present her case and to challenge the Commission's allegations of misconduct. It was not plain and obvious on the record that the Claimant's appeal was bound to fail. Both parties want the appeal to be returned to the General Division.

[13] I accept the outcome proposed by the parties.

⁷ See section 58(1)(b) of the DESD Act.

⁸ See section 59(1) of the DESD Act.

⁹ See the Claimant's email at page AD3-1.

¹⁰ See sections 58(1)(b) and 59(1) of the DESD Act.

¹¹ Formerly section 53 of the DESD Act, repealed on December 5, 2022.

¹² See *Papouchine v Canada (Attorney General)*, 2018 FC 1138 at paragraph 26.

Conclusion

[14] I am allowing the Claimant's appeal.

[15] The General Division made an error of law when it summarily dismissed the appeal. So, the case is being returned to the General Division for reconsideration.

Solange Losier
Member, Appeal Division