



Citation: *TP v Canada Employment Insurance Commission*, 2023 SST 763

Social Security Tribunal of Canada Appeal Division

Decision

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| Appellant: | T. P. |
| Respondent: Representative: | Canada Employment Insurance Commission Josée Lachance |
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| Decision under appeal: | General Division decision dated August 8, 2022 (GE-22-1630) |
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| Tribunal member: | Candace R. Salmon |
| Type of hearing: | In Writing |
| Decision date: | June 9, 2023 |
| File number: | AD-23-244 |

Decision

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

Overview

[2] The Claimant is T. P. She applied for Employment Insurance (EI) benefits after losing her job. The Canada Employment Insurance Commission (Commission) found she was not entitled to EI benefits because she lost her job due to misconduct.

[3] The Claimant appealed to the General Division. The General Division summarily dismissed the appeal. This means it decided the appeal without holding a hearing, concluding it had no reasonable chance of success and was bound to fail.

[4] The Claimant now appeals to the Appeal Division. She argues that the General Division made multiple mistakes, including errors of fact and law.

[5] The Commission agrees that the General Division made a legal mistake by summarily dismissing the Claimant's appeal. It says that this appeal was not clearly bound to fail, so the GD should not have summarily dismissed it.

The parties agree on the outcome of the appeal

[6] The parties agree that the General Division made an error of law by summarily dismissing the Claimant's appeal. They also agree that I should return the matter to the General Division for a hearing on the merits.¹

[7] I accept the proposed outcome. The General Division made an error of law by summarily dismissing this appeal. Summary dismissal is only appropriate for appeals

¹ The Commission conceded that the General Division made a mistake by summarily dismissing the Claimant's appeal: see AD2-3 and AD2-4. The Claimant agreed that the appeal should be allowed and sent back to the General Division for reconsideration: see AD4-1. However, she also wanted clarification of her options. A case conference was held on June 5, 2023. Both the Claimant and Commission attended. I explained the status of the appeal and options for next steps. Both parties agreed at the case conference that the matter should be sent back to the General Division.

that have no reasonable chance of success, or that are be “bound to fail.” This is a high threshold.² This appeal was not clearly bound to fail regardless of what evidence or argument might have been submitted at a hearing.

Conclusion

[8] The appeal is allowed. The General Division made an error of law. I am returning the appeal to the General Division for reconsideration by a different member.

Candace R. Salmon
Member, Appeal Division

² See *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147 at paragraphs 8 and 9.