



Citation: *DY v Canada Employment Insurance Commission*, 2024 SST 147

Social Security Tribunal of Canada Appeal Division

Decision

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| Appellant: | D. Y. |
| Respondent: | Canada Employment Insurance Commission |
| Representative: | Melanie Allen |
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| Decision under appeal: | General Division decision dated August 28, 2023 (GE-23-2039) |
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| Tribunal member: | Stephen Bergen |
| Type of hearing: | In Writing |
| Decision date: | February 16, 2024 |
| File number: | AD-23-888 |

Decision

[1] I am allowing the appeal. The matter will go back to the General Division for a hearing before a different member.

Overview

[2] D. Y. is the Appellant. I will call him the Claimant because he made a claim for Employment Insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission), found that he voluntarily left his employment without just cause. It denied his claim in a letter dated February 7, 2019.

[3] The Claimant did not ask the Commission to reconsider its decision until February 1, 2023. At that point, the Commission refused to reconsider because the Claimant was late. The Commission refused to grant him an extension of time.

[4] The Claimant appealed that refusal to the General Division of the Social Security Tribunal. The General Division found that the Commission did not consider all the relevant factors, so it did not make its decision “judicially.” The General Division corrected this error through its own analysis, but still found that the Claimant did not meet three out of the four factors that applied to his circumstances. It decided that the Commission could not grant the Claimant an extension of time to request a reconsideration.

Issue

[5] Did the General Division act unfairly by deciding without hearing from the Claimant?

The parties agree on the outcome of the appeal

[6] The Commission conceded that the General Division did not give the Claimant a fair opportunity to be heard and that it made an error of procedural fairness. It suggested that the matter be returned to the General Division to reconsider. Following a

settlement conference, the Claimant agreed with the Commission's position on the error and the remedy.

I accept the proposed outcome

[7] I accept the terms of the agreement between the Commission and the Claimant. I find that it is consistent with the law and in the interest of justice.¹

[8] A Claimant must have a fair chance to be heard. In this case, the Claimant had requested an "in writing" hearing. In response, the General Division sent the Claimant a letter by email, in which it asked the Claimant a series of questions. It gave the Claimant a deadline to respond that was one week from the date of its request. The Claimant did not understand the process, and believed he had longer to present his case. When the Claimant did not respond, the General Division issued its decision one week past the deadline without further notice to the Claimant.

[9] In the circumstances, it was unfair for the General Division to have decided the Claimant's case without questioning why he had not provided submissions, or without warning him of his jeopardy. The hearing was in writing, which means that the Claimant's only opportunity to be heard was through whatever he might send the General Division.

Remedy

[10] The Claimant could not present his case to the General Division. Since I cannot hear new evidence at the Appeal Division, I could not provide him with a remedy that would allow him to be fully heard.

[11] I agree with the parties that the only appropriate remedy in this case is to return the matter to the General Division for a new hearing before another member. The Claimant will have to select the form of hearing he desires, and be prepared to provide all of his evidence and arguments when required.

¹ In *Canada (Attorney General) v Larkman*, 2012 FCA 204, the Federal Court of Appeal said that the **interests of justice** are an overriding consideration.¹

Conclusion

[12] The General Division made an error of procedural fairness. I am allowing the appeal and returning the matter to the General Division for reconsideration.

Stephen Bergen
Member, Appeal Division