



Citation: *TC v Canada Employment Insurance Commission*, 2024 SST 118

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: T. C.

Respondent: Canada Employment Insurance Commission
Representative: Jessica Earles

Decision under appeal: General Division decision dated July 31, 2023
(GE-23-1084)

Tribunal member: Melanie Petrunia

Type of hearing: Videoconference
Hearing date: January 31, 2024
Hearing participant: Respondent's representative

Decision date: February 8, 2024
File number: AD-23-772

Decision

[1] The appeal is allowed. I am sending the matter back to the General Division for a new hearing.

Overview

[2] The Appellant, T. C. (Claimant) made a claim for employment insurance (EI) regular benefits on September 29, 2022, but asked that his claim be treated as though it was made on August 21, 2022.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) refused the Claimant's request. It decided that he hadn't shown good cause for the delay in submitting his claim.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division dismissed the Claimant's appeal. It found that the Claimant did not show good cause for the delay in claiming EI benefits, so his claim could not be treated as though it was made earlier.

[5] The Claimant is now appealing the General Division decision. He says that the General Division did not follow procedural fairness. The Commission agrees that the Claimant did not have all relevant information before the hearing.

[6] I have I have decided that the General Division failed to provide a fair process. I am sending the matter back to the General Division for reconsideration.

Preliminary matters

[7] The Claimant did not attend the hearing in this matter. I was satisfied that the Claimant received the Notice of Hearing and was aware of the time and date of the

hearing.¹ The Tribunal also left the Claimant three voicemails reminding him of the time and date of the hearing. I proceeded with the hearing without the Claimant.²

[8] After the hearing, the Tribunal received an email from the Claimant explaining that he was unable to attend the hearing due to a work obligation. He asked that the hearing be rescheduled.³ Because the hearing had already concluded, and considering the Commission's concession, I decided not to reschedule the hearing.

Issues

[9] The issues in this appeal are:

- a) Did the General Division fail to follow procedural fairness by proceeding with the hearing when the Claimant had not received the Commission's submissions?
- b) Did the General Division fail to provide a fair process because the Claimant was not provided with complete transcripts of his calls with Service Canada?
- c) If the General Division erred, how should the error be fixed?

Analysis

[10] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:⁴

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;

¹ Telephone log dated December 21, 2023, shows that the Claimant confirmed he received the Notice of Hearing and was aware of the hearing date and time.

² Section 58 of the *Social Security Tribunal Rules of Procedure* says that I can do this.

³ AD5

⁴ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

The General Division did not follow procedural fairness

[11] In his application for leave to appeal, the Claimant argues that the General Division did not follow procedural fairness. He says that a document was sent to him electronically upon starting the hearing. The hearing was already in progress, and he was unable to open the document and prepare a response.⁵

[12] The Commission had filed supplementary representations in response to a request from the General Division.⁶ The submissions were received by the Tribunal on July 7, 2023, but were not sent to the Claimant until the day of the hearing. The Claimant did not have the submissions at the hearing and the General Division read them out to him.⁷

[13] The Commission says that the General Division read the submissions to the Claimant and gave him an opportunity to respond. However, it argues that the Claimant did not have an opportunity to review the submissions before the hearing and prepare a response. It says that the Claimant did not have all relevant documents prior to the hearing.

[14] I agree with the Commission. I recognize that the General Division did read the submissions to the Claimant at the hearing and give him an opportunity to respond. The Claimant did not object to this approach at the hearing. However, because the Claimant did not have the Commission's submissions in advance, I find that the General Division should have adjourned to allow the Claimant to properly review the submissions prior to the hearing.

⁵ AD1-3

⁶ GD6

⁷ Recording of General Division hearing.

[15] The Claimant also argues that he asked for a complete transcript of all calls and computer logins in his Notice of Appeal to the General Division. He says that he did not receive this, only a brief summary of some of the calls. He asks to be sent these documents.

[16] The General Division asked the Commission to provide any notes or recorded contacts with the Appellant between May 28, 2022 and September 29, 2022. It also asked whether there were any login attempts.⁸

[17] It was this request from the General Division that resulted in the supplementary submissions of the Commission at issue in this appeal. The Commission stated in those submissions that there was no record of any communication with the Claimant during the period specified by the General Division.⁹

[18] I find that the General Division did not make any errors concerning the Claimant's request for transcripts of all calls and computer logins. It asked the Commission to provide any records of calls with the Claimant. The General Division provided a fair process in this respect. It was not required to do anything further.

Remedy

[19] At the hearing, the Commission argued that the matter should be referred back to the General Division, in the interests of natural justice.

[20] I agree that the appropriate remedy is for the Claimant's appeal to return to the General Division. The Claimant did not have an opportunity to review and respond to the Commission's submissions and I cannot consider new evidence.

⁸ GD5-1

⁹ GD6-1

Conclusion

[21] The appeal is allowed. I am returning the matter to the General Division for reconsideration.

Melanie Petrunia
Member, Appeal Division