



Citation: *DU v Canada Employment Insurance Commission*, 2024 SST 311

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	D. U.
Respondent:	Canada Employment Insurance Commission
Representative:	Jessica Earles
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Decision under appeal:	General Division decision dated November 22, 2023 (GE-23-2632)
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Tribunal member:	Glenn Betteridge
Decision date:	March 25, 2024
File number:	AD-24-19

Decision

[1] I am allowing D. U.'s appeal and sending his case back to the General Division to be reconsidered by a different member.

Overview

[2] The Canada Employment Insurance Commission (Commission) decided the Claimant wasn't entitled to Employment Insurance (EI) regular benefits when he was outside of Canada.

[3] He appealed the Commission's decision to the Tribunal's General Division. It dismissed his appeal. He appealed to the Appeal Division.

[4] I reviewed the appeal file and invited the parties to a settlement conference.

The parties agree on the outcome of the appeal

[5] At a settlement conference on March 18, 2024, the parties agreed

- the General Division didn't give the Claimant a full and fair opportunity to present his evidence and argument that he was entitled to benefits under section 55(6) of the *Employment Insurance Regulations* (EI Regulations)—an error of natural justice¹
- I should fix (remedy) this error by sending his case back to the General Division to be reconsidered by a different member of the General Division

I accept the proposed outcome

[6] I agree with the outcome proposed by the parties based on the information in the appeal file.

¹ The General Division makes an error of natural justice where it fails to observe a principle of natural justice. This is a ground of appeal under section 58(1)(a) of the *Department of Employment and Social Development Act*.

[7] Under section 37 of the *Employment Insurance Act* (EI Act), people outside Canada aren't entitled to EI benefits. **Section 55(6)(a) of the EI Regulations makes an exception.** A person isn't disentitled if they reside temporarily or permanently in the USA in a state that borders Canada, they are available for work in Canada, and they can report to a Commission office if they are asked to do that.

[8] The Commission disentitled the Claimant for periods of time he was in the USA visiting his partner. The Claimant availability for work wasn't an issue in the appeal.²

[9] During the hearing the General Division member asked the Claimant if he met any exception under section 55 of the EI Regulations, and if so, to explain how.³ The Claimant asked the General Division member to clarify section 55(6).⁴ The General Division replied that section was about someone who lives outside of Canada. And based on the information the Claimant had provided section 55(6) didn't apply to him.⁵

[10] The Claimant asked what Service Canada would need him to show to prove he was temporarily resident in the USA under section 55(6).⁶ Later on he asked again if there was anything more he could show to prove he was residing in the USA.⁷ The member told the Claimant he needed to have a driver's licence that proved his address in the USA, a residency card of some kind, or a work visa. The General Division could accept those things.

[11] Based on the hearing recording, I accept the parties' agreement that the Claimant didn't get a full and fair opportunity to present his case.⁸ In other words, the General Division used an unfair process.

² See the reconsider decision letter at page GD03-52. It says the Commission reversed its original decision that the Claimant was unavailable.

³ Listen to the recording of the General Division hearing starting at 9:05.

⁴ Listen to the recording of the General Division hearing at 13:36.

⁵ Listen to the recording of the General Division hearing at 14:15.

⁶ Listen to the recording of the General Division hearing at 15:05.

⁷ Listen to the recording of the General Division hearing starting at 20:44.

⁸ I am using plain language to describe an error of natural justice under section 58(1)(a) of the *Department of Employment and Social Development Act*.

[12] Under the Social Security Tribunal Rules of Practice, the Tribunal can give information about the law and evidence and identify what issue needs to be addressed.⁹ This is part of active adjudication, an approach meant to allow the parties to participate fully in the appeal process.

[13] Instead of providing the Claimant with information about the law that applied to the appeal and the evidence, the General Division did the opposite.

[14] The Claimant asked about the law and evidence he needed to bring forward under section 55(6). In response, the General Division confused rather than clarified the legal test the Claimant had to meet. The General Division didn't explain the "state contiguous to Canada" requirement under section 55(6)(a). Then it referred to documents the Claimant could rely on. But it didn't say why or how these documents were relevant to the legal test.

[15] Because the Claimant didn't get a fair hearing, I agree with the parties about how I should fix the error.

Conclusion

[16] I am allowing the appeal and sending the Claimant's case back to the General Division to be reconsidered by a different member.

Glenn Betteridge
Member, Appeal Division

⁹ See sections 17(2)(a), (d) and (e) of the *Social Security Tribunal Rules of Practice*.