



Citation: *DG v Canada Employment Insurance Commission*, 2024 SST 1174

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** D. G.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Julie Duggan

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**Decision under appeal:** General Division decision dated April 10, 2024  
(GE-24-957)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** July 17, 2024

**File number:** AD-24-350

## Decision

[1] The appeal is allowed. The file returns to the General Division for reconsideration by a different member.

## Overview

[2] The Appellant (Claimant) applied for Employment Insurance (EI) benefits on November 7, 2023. He asked that his application be antedated to November 6, 2022. The Commission refused to antedate his claim. It says he doesn't have good cause for not applying for benefits sooner. The Claimant appealed the reconsideration decision to the General Division of the Tribunal.

[3] The General Division found that the Claimant did not prove good cause for the entire delay because he did not act as a reasonable and prudent person would have done in similar circumstances. Therefore, his antedate request was refused.

[4] The Claimant was granted leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division hearing was not fair, that it did not consider the evidence he presented, and made an error in its interpretation of the law.

[5] I must decide whether the General Division hearing process was not fair in some way.

[6] I am allowing the Claimant's appeal. The file returns to the General Division for reconsideration by a different member.

## Issue

[7] Was the General Division hearing process not fair in some way?

## Analysis

### Appeal Division's mandate

[8] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.<sup>1</sup>

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.<sup>2</sup>

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

### Was the General Division hearing process not fair in some way?

[11] The Claimant submits that the General Division did not consider all the reasons, including his mental and emotional state, to determine whether he acted like a reasonable person in the circumstances. He submits that his mental state was the root cause for the job termination and included daily family time allocation for: daughter attempted suicide; mother's severe worsening dementia condition coupled with cases of both covid and shingles, and a separation with his common law partner. He submits that he offered the General Division to go more in detail about his personal situation, if necessary, but was not asked too.

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

<sup>2</sup> *Idem*.

[12] The Claimant submits that during the hearing, the General Division member performed a calculation in which the member said he would no longer be eligible for any weeks of benefits regardless of whether his appeal was granted or not. This left him with the impression that, for the member, overturning the Commission decision would be inconsequential.

[13] The Commission does not contest that the General Division's comments may have left the Claimant with the impression the decision was inconsequential and that it did not analyze highly material facts.

[14] The concept of "natural justice" includes a claimant's right to a fair hearing. The law requires that justice must not only be done, but also manifestly and undoubtedly seen to be done. The mere suspicion that a claimant has been denied this right is justification for an order returning the matter to the General Division.

[15] After listening to the recording of the General Division hearing, I agree with the parties. I find that the member gave the impression that overturning the Commission's decision would be inconsequential and that it did not analyze important facts.

[16] I am allowing the Claimant's appeal. The file returns to the General Division for reconsideration by a different member.

## **Conclusion**

[17] The appeal is allowed. The file returns to the General Division for reconsideration by a different member.

Pierre Lafontaine  
Member, Appeal Division