



Citation: *SB v Canada Employment Insurance Commission*, 2024 SST 1145

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	S. B.
Respondent:	Canada Employment Insurance Commission
Representative:	Julie Duggan

Decision under appeal:	General Division decision dated July 16, 2024 (GE-24-1647)
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Tribunal member:	Glenn Betteridge
Type of hearing:	In Writing
Decision date:	September 24, 2024
File number:	AD-24-513

Decision

[1] I am allowing S. B.'s appeal because the General Division didn't use a fair process.

[2] I am sending his case back to the General Division to be decided by a different member.

Overview

[3] S. B. is the Claimant in this case.

[4] He appealed the Commission's reconsideration decision to the Tribunal's General Division. Then asked for the hearing to be in writing.

[5] The General Division sent the Claimant a letter saying that a written hearing would not allow for a full and fair hearing of the appeal.¹ It proposed an in-person hearing. And it asked him to tell the General Division if he disagreed with that. He responded that he wanted the appeal in writing.²

[6] The General Division scheduled an in-person hearing. The Claimant didn't attend. The General Division went ahead with the hearing anyway. And it dismissed the Claimant's appeal.

[7] Now, I have to decide if it was fair for the General Division to go ahead with the hearing and decide the appeal.

Issue

[8] Did the General Division use an unfair process when it changed the hearing format and went ahead with the hearing without the Claimant?

¹ See GD6.

² See GD7-2.

Analysis

The General Division's process was unfair to the Claimant

[9] On the Claimant's application to the Appeal Division, he checked two errors. One error was that the General Division didn't follow procedural fairness.³

[10] The General Division makes an error if it uses an unfair process.⁴ These are called procedural fairness or natural justice errors. The question is whether a person knew the case they had to meet, had an opportunity to respond to that case, and had an impartial decision-maker consider their case fully and fairly.⁵

[11] The law says the Tribunal has to hold a hearing in the format requested by a claimant.⁶ The law provides exceptions. The Tribunal **may** hold a hearing in a different format when the claimant's choice would not allow for a full and fair hearing.⁷

[12] The Tribunal's rules say it **may** go ahead with an oral hearing if the Tribunal is of the opinion that a person received the notice of hearing.⁸ An in-person hearing is a type of oral hearing.

[13] In the circumstances, it was unfair for the General Division to go ahead with the hearing without the Claimant. While it had the discretion to do that—because it found the Claimant had received the notice of hearing—it was unfair to do so in the circumstances.

[14] Here is what the General Division wrote in its letter about why it intended to hold an in-person hearing:

After reviewing all of the available evidence for your appeal, I don't think a hearing in-writing will allow for a full and fair hearing in this case. I appreciate

³ See the Application to the Appeal Division at AD1-3.

⁴ This is a ground of appeal under section 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).

⁵ See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

⁶ See section 2(1) of the *Social Security Tribunal Regulations, 2022* (SST Regulations).

⁷ See section 2(3)(a) of the SST Regulations.

⁸ See section 58 of the *Social Security Tribunal Rules of Procedure* (SST Rules).

the new evidence you have submitted, but I still have some questions for you about what happened leading up to when you stopped working at Walmart. And, in my view, I don't feel that asking you these questions in-writing will allow for a full hearing since that format doesn't easily allow for follow-up questions, if necessary, and could therefore risk limiting any other evidence you provide. As a result, I am considering holding the hearing in person instead because I think it would better allow for a full and fair hearing.⁹

[15] The Claimant was clear in his response to the letter. The Claimant wanted the hearing in writing.

[16] The notice of hearing for the in-person hearing included the General Division's decision. "After reviewing his submissions, I have decided to depart from the Appellant's request and change the hearing format to in-person because I feel in writing would not allow for a full and fair hearing in this case."¹⁰

[17] If the General Division believed that only an in-person hearing would give the Claimant a full and fair hearing, then I can't see how going ahead with the in-person hearing without him achieved that. By going ahead with the hearing without the Claimant, the General Division deprived the Claimant of a full and fair opportunity to present his case and to respond to the General Division's questions.

[18] The duty of procedural fairness a decision-maker owes to a person is flexible and variable and depends on the circumstances.¹¹ The duty gives a party an **opportunity** to know the case and respond, fully and fairly. It isn't an absolute or a guarantee that the General Division should impose (or withdraw) without first considering the person's circumstances and legitimate expectations, the Tribunal's rules, and the consequences of the decision on the person.

[19] When the Claimant didn't attend the in-person hearing, the General Division could have used its discretion to reschedule the hearing—rather than going ahead with

⁹ See GD6-2.

¹⁰ See GD9-1.

¹¹ See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at paragraphs 21 to 28.

the hearing without the Claimant. It could have gone back to a written hearing. I think that's what the duty of procedural fairness required in the circumstances.

[20] The General Division was concerned that a written hearing isn't a free-flowing conversation.¹² It wanted to protect the Claimant from a situation where the written format would limit his evidence. It had to interpret and apply the Tribunal's rules so that the appeal process was as simple and quick as fairness allowed. And to apply the rules so that every party could participate in the appeal process. It didn't have to go back-and-forth in writing multiple times, over a prolonged period to give the Claimant a full and fair written hearing.

[21] The Commission argues that the Claimant knew the case he had to meet.¹³ He had been made aware of the requirement to show just cause and the law about voluntary leaving and just cause. The Commission also argues he had an opportunity to respond to the case and evidence. He explained in detail why he quit and why his statements changed over time. He didn't object that the hearing went ahead without him. Finally, the Commission argues the Claimant had an impartial decision-maker consider his case fully and fairly.

[22] I disagree with the Commission's arguments. My disagreement is based on the General Division's assessment of the duty of fairness it owed to the Claimant. The General Division believed that it needed to ask the Claimant questions. And it believed that it owed the Claimant—out of fairness—an in-person opportunity to discuss in detail, "what happened leading up to when you stopped working at Walmart."¹⁴ The Claimant didn't get that chance, not in person nor in writing. And that wasn't fair to the Claimant.

¹² See GD6-2.

¹³ See AD4-7.

¹⁴ See GD6-2.

Conclusion

[23] I am allowing the Claimant's appeal because the General Division process wasn't fair to the Claimant.

[24] I am sending the case back to the General Division to be reconsidered by a different member. Keeping in mind the Claimant has asked for a written hearing.

Glenn Betteridge
Member, Appeal Division