



Citation: *CM v Canada Employment Insurance Commission*, 2025 SST 1

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: C. M.

Respondent: Canada Employment Insurance Commission
Representative: Dinah Bélanger

Decision under appeal: General Division decision dated June 21, 2024
(GE-24-1483)

Tribunal member: Solange Losier

Type of hearing: Teleconference

Hearing date: December 20, 2024

Hearing participants: Appellant
Respondent's representative

Decision date: January 2, 2025

File number: AD-24-698

Decision

[1] The appeal is allowed. The General Division didn't follow a fair process. The matter will go back to the General Division for reconsideration (a new hearing).

Overview

[2] C. M. is the Claimant in this case. He applied for Employment Insurance regular benefits (benefits) after he stopped working.

[3] The Canada Employment Insurance Commission (Commission) decided that he wasn't entitled to get benefits from December 17, 2023, because he lost his job on November 15, 2023, as a result of his own misconduct.¹

[4] The General Division concluded the same.² It found that he was dismissed from his job due to his own misconduct and wasn't entitled to get benefits.³

[5] The Claimant applied to the Appeal Division arguing that the General Division didn't follow a fair process.⁴ The Commission agrees that the General Division didn't follow a fair process.

[6] The General Division failed to follow a fair process. Because of this, I am allowing the Claimant's appeal and returning the matter to the General Division for reconsideration.

Issue

[7] The issues in this appeal are:

a) Did the General Division fail to follow a fair process?

b) If so, how should the error be fixed?

¹ See Commission's initial and reconsideration decision at pages GD3-116 and GD3-127.

² See General Division decision at pages AD1A-1 to AD1A-7.

³ This is called a disqualification to benefits. See section 30(1) of the *Employment Insurance Act* (EI Act).

⁴ See Application to the Appeal Division at pages AD1-1 to AD1-9.

Analysis

[8] The Appeal Division can only intervene if the General Division made certain types of errors. The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:⁵

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact.

[9] I can intervene if the Claimant establishes that the General Division made one of the above errors.

The parties agree that the General Division didn't follow a fair process

[10] The principles of natural justice are about procedural fairness. The right to a fair hearing before the Tribunal includes certain procedural protections such as the right to an unbiased decision maker, the right to be heard, the right of a party to know the case and to be given an opportunity to respond to it, etc.

[11] The Claimant argues that the General Division failed to follow a fair process. He explains that he was “cut off” by the member when he tried explaining what happened before he lost his job.⁶

[12] The Commission also agrees that the General Division failed to follow a fair process in this case.⁷ It noted that during the General Division hearing, the Claimant was explaining why he was motivated to stay longer at his wife's birthday party and why he arrived late for work, but he didn't get a chance to finish because the member interrupted him indicating he was “going off on a tangent.”

⁵ See section 58(1) of the *Department of Employment and Social Development* (DESD Act).

⁶ See pages AD1-3 to AD1-4.

⁷ See Commission's arguments at pages AD4-1 to AD4-5.

[13] I listened to the audio recording from the General Division hearing to verify what happened. This is a brief summary of what I heard.⁸

[14] The General Division wanted to know why he hadn't told his boss in advance that he was going to be late for work, particularly since he knew when his wife's birthday was. The Claimant explained that he wasn't planning on going in to work late. But he noted that his daughter was going to be released from jail the day prior to his wife's birthday. She was struggling from addictions, and this was going to be a special event.

[15] The General Division explained that it didn't mean to interrupt him and reiterated that it had to decide whether his conduct was misconduct. The Claimant explained that the whole point of the celebration was because the daughter would be there. He said that he didn't tell his boss about his daughter's release from jail because it was a personal matter. The General Division then stopped the Claimant from speaking and told him he was "going off on a tangent."

[16] The parties agree and I accept that the General Division failed to follow a fair process.⁹ The General Division stopped the Claimant from fully presenting his case. The Claimant was trying to explain why he hadn't asked his boss in advance of his wife's birthday to go into work late. His explanation was relevant to the issue of whether his conduct was wilful misconduct.

Fixing the error

[17] There are two options for fixing an error.¹⁰ I can either send the file back to the General Division for reconsideration or give the decision that the General Division should have given. If substituting, I can make any necessary findings of fact.¹¹

⁸ See audio recording from General Division hearing at 35:23 to 40:40.

⁹ See section 58(1)(a) of the DESD Act.

¹⁰ See section 59(1) of the DESD Act.

¹¹ See section 64(1) of the DESD Act.

– **The parties don't agree on how to fix the error**

[18] The parties don't agree on how the General Division's error should be fixed.

[19] The Claimant says that this process has been long and stressful. He doesn't want the matter to go back to the General Division. He says there is no new information to provide. He wants the Appeal Division to decide there was no misconduct so that he can get EI benefits.

[20] The Commission says that this case should be returned to the General Division because of the possibility of new facts that might be presented which may result in a different outcome. It noted that the Appeal Division can't consider new facts and that returning the matter to the General Division would be more appropriate.

– **The matter has to return to the General Division for reconsideration**

[21] I find that this matter has to return to the General Division for reconsideration. The Claimant didn't have a full and fair opportunity to present his case at the General Division, so the record isn't complete. So, I can't substitute with my own decision in this case.

Conclusion

[22] The Claimant's appeal is allowed. The General Division didn't follow a fair process. The matter will return to the General Division for reconsideration.

Solange Losier
Member, Appeal Division