



Citation: *GD v Canada Employment Insurance Commission*, 2025 SST 162

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	G. D.
Respondent:	Canada Employment Insurance Commission
Representative:	D. Kopitas

Decision under appeal:	General Division decision dated September 10, 2024 (GE-24-2686)
-------------------------------	--

Tribunal member:	Elizabeth Usprich
Type of hearing:	In Writing
Decision date:	February 25, 2025
File number:	AD-24-672

Decision

[1] The appeal is allowed.

[2] The Claimant wasn't provided with a fair process. The matter must return to the General Division for a new hearing.

Overview

[3] G. D. is the Claimant. He lost his job. He applied for Employment Insurance (EI) benefits. A benefit period was established, and he was paid benefits.

[4] The Claimant's employer then asked the Canada Employment Insurance Commission (Commission) to reconsider the claim. The Commission gathered additional information. It decided the Claimant was disqualified from being paid EI benefits because he had been dismissed due to his misconduct.

[5] The Claimant appealed to the Social Security Tribunal (Tribunal) General Division. The General Division agreed with the Commission and said the Claimant was disqualified from being paid EI benefits.

[6] The Claimant appealed to the Tribunal's Appeal Division. I am allowing the appeal. The General Division didn't provide the Claimant with a fair process.

Issue

[7] The issues in this appeal are:

a) Did the General Division fail to follow a fair procedure during the hearing?

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

Analysis

[8] I can intervene (step in) only if the General Division made a relevant error. There are only certain errors I can consider.¹ Briefly, the errors I can consider are about whether the General Division did one of the following:

- It acted unfairly in some way.
- It decided an issue it shouldn't have, or didn't decide an issue it should have.
- It didn't follow the law or misinterpreted the law.
- It based its decision on an important error about the facts of the case.

[9] This case was about misconduct, as considered by the *Employment Insurance Act*. The Claimant didn't feel he had a fair process from the General Division.

The General Division didn't provide a fair process

[10] A fair process is also called natural justice. Some principles of natural justice include making sure parties have a fair opportunity to present their case and the right to be heard.²

[11] The Claimant disclosed to the General Division that he has post-traumatic stress disorder (PTSD), and it affects how he communicates.³ During the hearing, the Claimant told the General Division he would need a week to recover from the hearing.⁴

[12] The Claimant now argues his PTSD was exacerbated when the General Division member "threatened (him) with being muted during the hearing, significantly

¹ Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the grounds of appeal.

² See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74 at paragraph 10.

³ Listen to the General Division hearing recording at 00:16:09.

⁴ Listen to the General Division hearing recording at 00:45:57.

undermining my ability to fully participate and present my case.”⁵ The Claimant argues that by doing this the General Division didn’t provide him with a fair hearing.

[13] The General Division told the Claimant the hearing needed to be concluded. Further, the General Division member told the Claimant he would be muted if he didn’t let the Hearing Member “wrap up”.⁶ The Claimant responded that he didn’t hear what the Hearing Member said.⁷

[14] The Commission doesn’t agree there was a breach of procedural fairness. The Commission says the hearing was long. The Commission says the General Division gave the Claimant ample opportunity and time to state his case.⁸ The Commission says the Tribunal must make sure the appeal process is as simple and quick as fairness allows.

[15] The Supreme Court of Canada says the duty of fairness is variable and must be looked at on a case-by-case basis.⁹ But the overarching requirement is fairness. The *Social Security Tribunal Rules of Procedure* (Rules) say the Tribunal must have a process that is simple, quick and fair.¹⁰ The Rules also note, “The Tribunal hears appeals in a way that allows the **parties to participate fully** [emphasis added] in the appeal process.”¹¹ The wording is clear, the Tribunal must make sure the process is simple and quick, but the process must remain fair. In other words, fairness can’t be compromised.

[16] The Claimant told the General Division at the start of the hearing that he has PTSD. The General Division didn’t ask, at any time, if there was anything the Claimant needed to meaningfully participate in the hearing process. No information was gathered to understand if the Claimant would need to be accommodated during the hearing. The

⁵ See the Claimant’s Notice of Appeal at AD3-8.

⁶ Listen to the General Division hearing recording at 02:33:59.

⁷ Listen to the General Division hearing recording at 02:34:08.

⁸ See AD4-5, the Commission’s submissions to the Appeal Division.

⁹ See *Canada (Attorney General) v Mavi*, 2011 SCC 30 at paragraph 42. See also *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at paragraph 21.

¹⁰ See the *Social Security Tribunal Rules of Procedure* at section 6 and also see section 8.

¹¹ See the *Social Security Tribunal Rules of Procedure* at section 17(1), which is about active adjudication.

Claimant explained to the Appeal Division that his PTSD affects how he speaks and his ability to stay focussed. To provide a fair hearing at the Appeal Division, I explained orally, and in writing, how things would proceed. If the Claimant got off track, I reoriented him back to what he needed to answer. To ensure a fair process, after the Claimant disclosed he had PTSD, the General Division should have taken steps to understand how the Claimant might be affected by the hearing process. Further, it could have explored whether an accommodation would address the Claimant's PTSD.

[17] The Claimant says his PTSD can cause disorientation.¹² The Claimant says his PTSD was exacerbated after the General Division member said he would be muted. The Claimant became noticeably changed after this incident. He told the General Division member that he was having issues following what was being said.¹³

[18] Additionally, after the hearing, the General Division refused to accept additional documents sent in by the Claimant.¹⁴ The General Division didn't explain if it considered section 42 of the Rules. Section 42(2) says the Tribunal must consider any relevant factor when deciding whether to accept late evidence. It isn't clear if the General Division considered the factors. It isn't clear if any of these late submissions would have related to what the Claimant was trying to say during the General Division hearing. This is connected to whether the Claimant received a fair process. The Claimant may have been trying to finish what he was attempting to say during the hearing.

[19] The length of the hearing can't be the guiding principle for whether someone had full opportunity to provide all relevant evidence. If a party discloses a medical condition that could affect how information is conveyed, it should be considered what a fair process is for that person. For example, a fair process may include breaks, or other things that appropriately accommodate the party.

[20] In this case, it can't be said the Claimant had an opportunity to say everything he needed to about the merits of the case. The General Division asked several questions it

¹² See AD3-8 the Claimant's Notice of Appeal.

¹³ Listen to the General Division hearing recording at 02:34:25 to 02:35:30.

¹⁴ See the General Division decision at paragraph 7.

needed to know, after it told the Claimant he would be muted.¹⁵ The General Division was asking relevant questions. The questions were relevant because they related to allegations the employer put forward about the Claimant's alleged misconduct. The Claimant says because his PTSD was triggered, it can cause disorientation and inability to provide consistent testimony.¹⁶ The General Division didn't consider the Claimant's PTSD and never investigated if the Claimant needed any accommodation.

[21] The Claimant says his PTSD was activated during the hearing. The Claimant says this affected his behaviour and his ability to participate meaningfully in the process. The Claimant didn't stay on topic during the hearing. But if the General Division had taken steps to understand the impacts of the Claimant's PTSD, it may have understood how to accommodate the Claimant. Had this occurred, the Claimant may have been able to meaningfully participate in the hearing process. Additionally, the General Division could have used active adjudication to make sure the Claimant was clearer about the focus of the hearing and what it needed to know.

Remedy

[22] I have found an error. There are two main ways I can remedy (fix) it. I can make the decision the General Division should have made. I can also send the case back to the General Division.¹⁷

[23] The Claimant, after asking the Appeal Division for a written process, asked for the Appeal Division to give the decision the General Division should have given.

[24] I have made a finding the Claimant didn't have a fair process. I accept the Claimant's position that he couldn't fully participate and present his case. Because the

¹⁵ Listen to the General Division hearing recording at 02:34:25 to 02:37:05.

¹⁶ See AD3-8 the Claimant's explanation of how the PTSD impaired his ability to function during the hearing.

¹⁷ Section 59(1) of the DESD Act allows me to fix the General Division's errors in this way.

Claimant says he couldn't fully participate, I find the only remedy is to send the case back to the General Division.

[25] The Claimant must understand that sending the case back to the General Division means he will have a new hearing. For the Tribunal to ensure it's appropriately accommodating the Claimant, the Claimant should think about the accommodations that could help him to meaningfully participate in the hearing process. The Claimant has an obligation to participate in the accommodation process.

Conclusion

[26] The appeal is allowed.

[27] The General Division didn't provide the Claimant with a fair process. The case must go back to the General Division for a new hearing.

Elizabeth Usprich
Member, Appeal Division