



Citation: *TP v Canada Employment Insurance Commission*, 2025 SST 89

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	T. P.
Representative:	L. P.
Respondent:	Canada Employment Insurance Commission
Representative:	Dionisios Kopitas

Decision under appeal:	General Division decision dated September 12, 2024 (GE-24-2930)
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Tribunal member:	Solange Losier
Type of hearing:	Teleconference
Hearing date:	January 31, 2025
Hearing participant:	Appellant's representative Respondent's representative
Decision date:	February 5, 2025
File number:	AD-24-676

Decision

[1] The appeal is allowed. The General Division failed to follow a fair process. The matter will go back to the General Division for reconsideration to be heard by a different member.

Overview

[2] T. P. is the Claimant in this case. When she stopped working, she applied for Employment Insurance regular benefits (benefits).

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant wasn't entitled to get benefits from March 10, 2024, because it says she lost her job due to her own misconduct.¹

[4] The General Division concluded the same.² It decided that the Claimant had lost her job because she was late for work and found that her conduct amounted to wilful misconduct according to the *Employment Insurance Act* (EI Act).³ Because of that, she was disqualified from getting benefits.⁴

[5] I have found that the General Division failed to follow a fair process because it didn't allow the Claimant's mother who was a witness to testify at the hearing. I am returning the matter to the General Division for reconsideration.

Preliminary matters

– The Claimant's mother attended as a representative

[6] The Claimant didn't attend the Appeal Division hearing. However, her mother, as representative attended. When I refer to the Claimant in this decision, I am referring to the arguments her mother as representative made on her behalf.

¹ See Commission's initial and reconsideration decision at pages GD3-35 to GD3-36 and GD3-42.

² See General Division decision at pages AD1A-1 to AD1A-9.

³ See paragraph 32 of the General Division decision.

⁴ See section 30(1) of the *Employment Insurance Act* (EI Act).

– **The Claimant submitted four documents after the Appeal Division hearing**

[7] The Claimant submitted four documents (unsolicited) to the Tribunal after the Appeal Division hearing had already concluded. The following documents were received:

- a) A copy of an acknowledgement letter from the Tribunal dated September 12, 2024 (marked as AD10 and part of the General Division file)
- b) An email to restate why she doesn't want the matter returned to the General Division (marked as AD11)
- c) An email restating her case and making further arguments (marked as AD12)
- d) An email identifying a snapshot from "quora.com" about terminating an employee for misconduct (marked as AD13)

[8] After reviewing all of the post-hearing documents she submitted, I wrote the Claimant a letter confirming that I would accept only two of her post-hearing documents and no further documents.⁵ I accepted and considered the documents marked AD10 and AD11 because she's simply restating her case, so it isn't new information. I also considered that there was no prejudice (or unfairness) to the Commission by accepting these documents after the hearing.

[9] However, I am **not** accepting two of the Claimant's documents marked AD12 and AD13. While the Claimant is partly restating her case in these documents, she's also expanding and raising new arguments.

[10] The Tribunal has to ensure that the appeal process is as simple and quick as fairness allows.⁶ Both parties are entitled to a fair process. It would be unfair to the Commission if I permitted the Claimant to submit expanded and new arguments after the hearing already took place. It would also add further delays. As well, some of the Claimant's arguments don't appear to be relevant (they relate to allegations of wrongful

⁵ See pages AD14-1 to AD14-3.

⁶ See section 8(1) of the *Social Security Tribunal Rules of Procedure* (SST Rules).

dismissal by the employer and the legality of the warning letter issued by the employer).⁷

[11] I am not accepting or considering the documents at AD12 and AD13 in making this decision. The Claimant had a full and fair opportunity to prepare for and present her case at the Appeal Division hearing on January 31, 2025.⁸

Issues

[12] I have focused on the following issue:

- a) Did the General Division fail to follow a fair process by not allowing the Claimant's mother to testify as a witness?
- b) Did the General Division make any other reviewable errors?
- c) If so, how should the error be fixed?

Analysis

[13] If the General Division failed to follow a fair process, made an error of law, or an error of fact, then I can intervene.⁹

[14] The Claimant argues that the General Division didn't follow a fair process and made several other reviewable errors.¹⁰ So, I'll start by reviewing whether the General Division followed a fair process.

⁷ See *Canada (Attorney General) v McNamara*, 2007 FCA 107 at paragraphs 22 and 23. The *McNamara* decision says that the focus is on the employee's conduct, not the employer's conduct. There are other avenues for employees who have been wrongfully dismissed to penalize the employer's behaviour rather than have taxpayers pay for the employer's action through EI benefits. The General Division referred to the *McNamara* decision in paragraph 44 of its decision.

⁸ This case was previously adjourned to give the Claimant additional time to prepare, see pages AD4-1 and ADB-1 to ADB-3. The initial deadline to provide written arguments was December 2, 2024, but that was extended to January 22, 2025, see pages AD5-1 to AD5-3.

⁹ See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

¹⁰ See pages AD6-1 to AD6-7.

The General Division didn't follow a fair process

[15] The principles of natural justice are concerned with procedural fairness. The right to a fair hearing before the Tribunal includes certain procedural protections. For example, the right to an impartial (unbiased) decision maker, the right of a party to know the case against them and to be given an opportunity to respond to it.

[16] The Claimant says that the General Division didn't follow a fair process because her mother wasn't permitted to testify at the hearing.¹¹ She argues that she had direct knowledge and testimony to provide about a telephone conversation she had with the manager.

[17] The Commission says that the General Division **may** have failed to follow a fair process by refusing to allow the mother to testify as a witness. However, it submits that the final outcome (misconduct proven) would have been the same.

[18] The General Division's written decision identified that the Claimant's mother was participating as a support person.¹² It says she wasn't sworn in as a witness because she had no direct knowledge of the facts and it was limited to what she had been told by the Claimant. Because of that, the General Division noted that she wasn't permitted to testify but it did allow the mother to prompt the Claimant during the hearing about the facts.

[19] I listened to the audio recording from the General Division hearing. I've summarized the relevant parts:¹³

- At the beginning of the hearing, the Claimant's mother introduced herself as a witness, but also said she was there for "moral support." The General Division explained that if she were going to testify, she would be sworn in later.

¹¹ See page AD1-3.

¹² See paragraphs 16–17 of the General Division decision.

¹³ See audio recording of General Division hearing at 2:47 to 3:42 and 41:37 to 42:50.

- Later on, the Claimant's mother started speaking at length during the hearing. The General Division explained that she was now testifying and would need to be sworn in as a witness.
- The Claimant's mother agreed and asked to be sworn in, but the General Division interrupted her, saying that she didn't seem to have direct knowledge of the events and so, it would be better to hear from the Claimant directly.

[20] The *Social Security Tribunal's Rules of Procedure* say that a witness testifies at an oral hearing to give **relevant** evidence.¹⁴

[21] I find that the General Division erred because it failed to follow a fair process in this case.¹⁵ The Claimant's mother identified as a witness at the beginning of the General Division hearing and expected to testify about a discussion she had with the manager. The General Division didn't permit her to testify.

[22] The General Division's written decision says that the Claimant's mother had no direct knowledge of the event, but it actually didn't know what she was going to say because she wasn't permitted to testify. And it didn't seek to clarify whether the testimony was relevant or not relevant.

[23] If the Claimant's mother spoke to the manager, then her testimony might be relevant to the issue of the Claimant's alleged misconduct.

[24] The General Division did give some latitude during the hearing by permitting the mother to assist the Claimant during the hearing. However, that isn't the same as providing her own testimony about the discussion she had with the manager.

[25] Accordingly, the General Division erred by failing to follow a fair process by not permitting the Claimant's mother to testify as a witness. This interfered with the Claimant's right to present her case.

¹⁴ See section 16(1) of the SST Rules.

¹⁵ See section 58(1)(a) of the DESD Act.

[26] The Claimant has made other arguments about reviewable errors that it says the General Division made. However, it isn't necessary for me to address them because I have already found one error, so I can intervene on that basis.

Fixing the error

[27] There are two options for fixing an error made by the General Division.¹⁶ I can either send the file back to the General Division for reconsideration or give the decision that the General Division should have given.

[28] The Claimant wants me to rescind the General Division's decision. She wants me to substitute with my own decision and decide there was no misconduct so that she can get benefits. She doesn't see a point in returning it because she disagrees with their interpretation of "misconduct" and doesn't have much confidence in another decision by the General Division.¹⁷

[29] The Commission wants the Claimant's appeal to be dismissed. It says that even if the Claimant's mother had testified, the overall outcome (misconduct proven) would be the same.

– The matter will go back to the General Division for reconsideration

[30] I acknowledge that the parties want me substitute with my own decision, but I won't be substituting with my own decision in this case. The matter will go back to the General Division for reconsideration. I will explain further.

[31] The main factor that I have to consider is whether the parties have had a full and fair opportunity to present their evidence before the General Division on all relevant issues. If the record is incomplete in some way, then it would be appropriate to return to the General Division for reconsideration.

[32] The Claimant didn't get a full and fair opportunity to present her case on all relevant issues and she ought to be given an opportunity to do that. Her mother didn't

¹⁶ See section 59(1) of the DESD Act.

¹⁷ See page AD11-1.

get a chance to testify about the conversation she had with the manager and this may have been relevant to the issue of the Claimant's alleged misconduct.

[33] I'd like to point out that the record may not be complete for another reason. One of the other arguments raised by the Claimant was that there were some important documents missing from the record that had been submitted to the General Division of the Tribunal.¹⁸ She says there were technical issues.¹⁹

[34] I haven't made any findings on the issue of missing documents, but I am simply pointing out her argument because it may further support that the record may not be complete. And the Appeal cannot accept new evidence (except for limited circumstances) because it's a review of the General Division's decision based on the same evidence.²⁰

[35] The matter will return to the General Division for reconsideration. The Claimant's mother will now have the opportunity to testify (and she can resubmit any missing documents).

Conclusion

[36] The Claimant's appeal is allowed. The General Division failed to follow a fair process. The matter will return to the General Division for reconsideration to be heard by a different member.

Solange Losier
Member, Appeal Division

¹⁸ See pages GD6-1 to GD6-4 and AD10-1 to AD10-2.

¹⁹ To support her position, she referred to an acknowledgement letter from the Tribunal dated September 12, 2024, at page AD10-2. This letter was part of the General Division record. She says that some documents coded as "GD6" were missing.

²⁰ See pages AD1B-1 to AD1B-6 and *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraphs 29 and 34; *Parchment v Canada (Attorney General)*, 2017 FC 354, at paragraph 23. The exceptions to new evidence are found in *Sibbald v Canada (Attorney General)*, 2022 FCA 157, at paragraphs 37–39.