



Citation: *NM v Canada Employment Insurance Commission*, 2025 SST 647

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

# **Decision**

<b>Appellant:</b>	N. M.
<b>Respondent:</b>	Canada Employment Insurance Commission
<b>Representative:</b>	Amélie Lavoie

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<b>Decision under appeal:</b>	General Division decision dated April 2, 2025 (GE-25-890)
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<b>Tribunal member:</b>	Stephen Bergen
<b>Type of hearing:</b>	Teleconference
<b>Hearing date:</b>	June 18, 2025
<b>Hearing participants:</b>	Appellant Respondent's representative
<b>Decision date:</b>	June 19, 2025
<b>File number:</b>	AD-25-248

## Decision

[1] I am allowing the appeal. The General Division process was unfair to the Claimant. I am returning the matter to the General Division for reconsideration.

## Overview

[2] N. M. is the Appellant. I will call him the Claimant because this appeal is about his claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant took a medical leave from his job and collected sickness EI benefits. He decided not to return to work even after he was medically cleared to work, and he applied for regular benefits. The Commission refused to pay him regular benefits. It said that he voluntarily left his job without just cause.

[4] The Claimant asked the Commission to reconsider, but it would not change its decision. The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed his appeal. He next appealed the General Division decision to the Appeal Division.

[5] I am allowing the appeal. The General Division did not maintain the hearing recording, and this prejudiced the Claimant's ability to challenge its findings of fact. I am returning the matter to the General Division for reconsideration.

## Issue

[6] Was the General Division's failure to maintain the audio recording of the hearing unfair to the Claimant?

[7] If so, how should the error be fixed?

## Analysis

[8] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division made an error of law when making its decision.
- d) The General Division based its decision on an important error of fact.<sup>1</sup>

[9] The Claimant asserted that the General Division made an error of procedural fairness.

### **Procedural fairness**

[10] I find that the General Division acted unfairly by not maintaining an audio record of the oral hearing.

[11] When the Claimant appealed to the General Division, he spoke of how he had been uncomfortable in the workplace since he was first harassed by a co-worker in 2021. He said that he tried to avoid contact with this co-worker for three years but “couldn’t take it anymore,” implying that the harassment continued.

[12] The General Division’s decision focussed on the Claimant’s assertion that he was being harassed at work. It found that he had reasonable alternatives to leaving partly because he could have followed up on the status of the harassment investigation. According to the General Division, the Claimant “understood” the employer would follow up on his complaint when he returned the following Monday, and he did not follow up himself with his manager or Human Resources.

[13] There are few details in the evidentiary record about the harassment claim. The General Division’s understanding of what the Claimant did in response to the harassment could only have come from his evidence at the oral hearing.

[14] In his application to the Appeal Division, the Claimant responded to the General Division’s finding that he might have followed up on the status of the investigation as a

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<sup>111</sup> This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

reasonable alternative to leaving. He stated that he followed the employer's harassment procedures and that the Commission (he may mean the General Division) did not review the employer's harassment policy.

[15] Without the audio record, I am unable to determine if the General Division made an error of fact in how it assessed the Claimant's claim to have been harassed or in finding that he did not follow up with his employer. Since the Appeal Division cannot receive new evidence, the lack of the audio record prejudices the Claimant's ability to pursue his appeal.

[16] I note that my decision is consistent with the Commission's position. The Commission suggests that the lack of an audio recording is unfair to the Claimant in the circumstances, and that I should find an error of procedural fairness.

## **Remedy**

[17] I have found that the General Division process resulted in unfairness to the Claimant. That means that I must decide how to remedy the General Division decision.

[18] I can either make the decision that the General Division should have made, or I can send the matter back to the General Division for reconsideration.<sup>2</sup>

[19] The Claimant would like me to make the decision, because it would be quicker and he is in difficult financial circumstances. However, he has also said I should send it back to the General Division if I cannot decide in his favour on the existing evidence.

[20] The Commission states that I cannot confirm the evidence and arguments presented at the General Division hearing without the hearing audio. Therefore, the matter should go back to the General Division.

[21] I agree with the Commission. The record is not complete without the audio recording. I am clearly missing evidence related to the Claimant's assertion that he was harassed at work, and to the General Division's conclusion that the Claimant had

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<sup>2</sup> See section 59(1) of the DESDA.

reasonable alternatives to quitting in response to the harassment. I am sending the matter back to the General Division to reconsider.

## **Conclusion**

[22] I am allowing the appeal and returning the matter to the General Division for reconsideration.

Stephen Bergen  
Member, Appeal Division