



Citation: *LL v Canada Employment Insurance Commission*, 2025 SST 322

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:

L. L.

Respondent:

Canada Employment Insurance Commission

Representative:

Erin Tzvetcoff

Decision under appeal:

General Division decision dated December 30, 2024
(GE-24-3729)

Tribunal member:

Stephen Bergen

Decision date:

February 20, 2025

File number:

AD-25-17

Decision

[1] I am allowing the appeal. The General Division acted unfairly after making an error of fact. I am sending the matter back to the General Division to reconsider.

Background

[2] L. L. is the Appellant. I will call her the Claimant because her appeal concerns her claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission (Commission), which I will call the Commission.

[3] The Commission determined that the Claimant was outside of Canada from July 21, 2022, to August 18, 2022. It decided that she had not been entitled to receive benefits because she was outside of Canada and also because she did not show that she was available for work. It decided that she had knowingly made false statements when she completed claim reports for the period she was outside Canada. Because of this, it imposed a penalty and a notice of violation.

[4] The Commission maintained its decision, so the Claimant appealed to the General Division. An oral hearing was scheduled, but the Claimant did not attend. The General Division decided that the Claimant had received notice of the hearing, and it proceeded without hearing from her. It dismissed her appeal.

[5] The Appeal Division granted leave to appeal because there was an arguable case that the General Division made an error of fact when it found that the Claimant had notice of the hearing. It was also unfair for it to proceed without giving the Claimant a chance to give evidence.

The parties agree on the outcome of the appeal

[6] The parties have asked for a decision based on the agreement they reached in a February 19, 2025, settlement conference.

[7] The parties agreed as follows:

That the General Division made an error of fact when it found that the Claimant had received notice of the hearing.

That it was unfair for the General Division to make its decision without hearing from the Claimant.

I accept the parties' agreement

[8] The parties' agreement accords with the facts and with the law.

– Error of fact

[9] The Claimant did not appear for her hearing scheduled for December 17, 2024. The General Division was satisfied that the Claimant had notice of the hearing, and it proceeded in her absence.

[10] There was no evidence that the Claimant received notice of the hearing. The General Division acknowledged that the Tribunal had been unable to reach the Claimant by telephone to inform her of the scheduled hearing date, or to remind her. However, it decided that she had been notified. It stated that there was no reason to conclude otherwise.

[11] One of the ways the Tribunal sought to notify the Claimant was by a courier delivery on December 3, 2024. The Tribunal's files show that this courier envelope was returned to the Tribunal undelivered on December 24, 2024, six days before the General Division issued its decision.

[12] The General Division made an error of fact because it ignored evidence that the Claimant had not received the Notice of Hearing.

– **Procedural fairness**

[13] The General Division proceeded with the hearing without giving the Claimant an opportunity to provide evidence or make representations, which denied her the right to be heard.

[14] This is a procedural fairness error.

Remedy

[15] The record is not complete at the Appeal Division, because the Claimant missed her chance to present evidence.

[16] The Appeal Division is not authorized to hear new evidence. It cannot hear evidence about any of the issues under appeal. It cannot consider whether and when the Claimant was outside Canada or whether and when she was available for work. It cannot consider whether she knowingly made a false statement, or hear any mitigating circumstances that affect the penalty imposed for false statements.

[17] However, the General Division is empowered to hear evidence. She would have been able to explain her circumstances to the General Division if she had been given the opportunity.

[18] In the circumstances, the appropriate remedy is the one agreed by the parties. The matter must be returned to the General Division for a new hearing, so that the Claimant has an opportunity to tell her story and explain herself.

Conclusion

[19] I am allowing the appeal. The General Division made an error of fact which resulted in procedural unfairness to the Claimant. I am returning the matter to the General Division to reconsider. The Claimant shall be given a new oral hearing before a different member.

Stephen Bergen
Member, Appeal Division