



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. R. v Canada Employment Insurance Commission*, 2019 SST 133

Tribunal File Number: AD-18-591

BETWEEN:

**A. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Stephen Bergen

DATE OF DECISION: February 14, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed.

### **OVERVIEW**

[2] The Appellant, A. R. (Claimant), established a claim for Employment Insurance benefits, but the Respondent, the Canada Employment Insurance Commission (Commission), learned that she was employed during weeks in which she was also receiving benefits. As a result, the Commission allocated her earnings to the weeks of benefits and declared an overpayment. It also imposed a penalty and issued a Notice of Violation.

[3] The Claimant requested a reconsideration, stating that she did not agree with “the payment.” However, the Commission maintained its decision on the overpayment. The reconsideration decision did not mention the penalty or the Notice of Violation.

[4] The Claimant appealed to the General Division. The General Division explicitly refused jurisdiction on the penalty issue, did not mention the Notice of Violation, and dismissed the appeal in respect of the overpayment and allocation. The Claimant now appeals to the Appeal Division.

### **ISSUE**

[5] Did the General Division fail to observe a principle of natural justice by reaching a decision that was unfair?

[6] Did the General Division fail to exercise its jurisdiction by failing to decide on the question of the penalty or the Notice of Violation?

### **ANALYSIS**

[7] The Appeal Division may intervene in a decision of the General Division only if it can find that the General Division has made one of the types of errors described by the “grounds of

appeal” in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[8] The grounds of appeal are as follows:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

**Issue 1: Did the General Division fail to observe a principle of natural justice by reaching a decision that was unfair?**

[9] In her application for leave, the Claimant argued that, if mistakes were made, they were made by the Commission. She felt it was unfair that she should have to repay benefits that were paid to her as a result of a Commission error. She has indicated on her leave to appeal application that the General Division failed to observe a principle of natural justice or erred in jurisdiction.

[10] Natural justice refers to the fairness of the process and includes procedural protections such as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against him or her. The Claimant has not raised a concern with the adequacy of the notice of the General Division hearing, with the pre-hearing exchange or disclosure of documents, with the manner in which the General Division hearing was conducted or the Claimant’s understanding of the process, or with any other action or procedure that could have affected her right to be heard or to answer the case. Nor has she suggested that the General Division member was biased or that the member had prejudged the matter. Therefore, there is no arguable case that the General Division made an error under section 58(1)(a) of the DESD Act by failing to observe a principle of natural justice.

**Issue 2: Did the General Division fail to exercise its jurisdiction by failing to decide on the question of the penalty or the Notice of Violation?**

[11] The Claimant raised two main concerns at the General Division. Her first concern was that the Commission had not accepted that she did not actually receive certain cheques for benefits that the Commission had sent her. Her other concern was that the Commission had not properly considered her entitlement to additional sickness benefits. Neither of these issues were considered in the original July 20, 2017, decision, the October 16, 2017, reconsideration decision, or the reconsideration investigation that took place in between the two. It is plain that the General Division had no jurisdiction to consider them.

[12] The issues that were actually before the General Division were whether the money that the Claimant earned while on benefits should be considered earnings, whether it was properly allocated, and whether the allocation resulted in the overpayment that the Commission was seeking to recover. In relation to these issues, the Claimant has not pointed to any error of law, mistake, or overlooked evidence that might have affected the decision.

[13] When I granted leave to appeal, I was concerned with the manner in which the General Division restricted its jurisdiction, and how it failed to consider the question of the Claimant's penalty and the Notice of Violation. I considered it to be arguable at least that the Claimant's request to have her payment reconsidered implied a request for reconsideration of all of the consequences that flowed from the incorrect payment decision.<sup>1</sup> The Commission's dealings with the Claimant appeared to confirm that these issues were in view.<sup>2</sup>

[14] However, I recognize that the October 16, 2017, reconsideration decision letter refers to the overpayment only.<sup>3</sup> Although the General Division took a narrow view of its jurisdiction to consider only those matters specifically referenced in the letter, I am unable to find on a balance of probabilities that it failed to exercise its jurisdiction under section 58(1)(a) of the DESD Act.

[15] I note that the Commission has acknowledged its oversight and that it has committed to providing the Claimant with a reconsideration decision in relation to her penalty and Notice of Violation. Given that this is the case, there would be no purpose in returning this matter to the

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<sup>1</sup> GD3-33.

<sup>2</sup> GD3-43, GD3-47 to 48.

<sup>3</sup> GD3-50.

General Division to reconsider its jurisdiction when the Commission intends to make a new reconsideration decision on these matters regardless. If the Claimant is dissatisfied with the Commission's reconsideration decision, the Claimant will have a new right of appeal to the General Division.

**CONCLUSION**

[16] The appeal is dismissed.

Stephen Bergen  
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
Submissions:	Isabelle Thiffault, Representative for the Respondent