



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. T. v Canada Employment Insurance Commission*, 2019 SST 502

Tribunal File Number: AD-19-3

BETWEEN:

B. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: May 21, 2019

DECISION AND REASONS

DECISION

[1] I have confirmed the decision of the General Division in part, and I have returned the decision to the General Division to reconsider part of its decision.

OVERVIEW

[2] The Appellant, B. T. (Claimant), applied for Employment Insurance and received Employment Insurance benefits in 2016 based on incorrect Record of Employment information provided to the Respondent, the Canada Employment Insurance Commission (Commission) by her government's payroll system. This was not discovered until she applied for Employment Insurance again in 2018, and the payroll system again gave incorrect information to the Commission. This time the Claimant noticed that something was not right very quickly and brought it to the attention of the Commission. The Commission agreed and adjusted the Claimant's benefit entitlement which resulted in a small overpayment. The Commission also investigated the 2016 claim, and it reduced the Claimant's entitlement to both the weekly benefit entitlement and the number of weeks of entitlement, resulting in a more substantial overpayment.

[3] The Claimant asked that the Commission reconsider both decisions. The Commission reduced the amount of the overpayment under the 2016 claim but maintained its decision on the 2018 claim. The Claimant appealed both reconsideration decisions to the General Division, questioning why she should be held responsible for someone else's mistake and also challenging the calculation of the family supplement. The General Division joined the two appeals based on their similar facts, and then dismissed both appeals. The Claimant now appeals to the Appeal Division.

[4] The General Division did not err in dismissing the appeal of the 2018 claim (GE-18-2997) on the issue of reduced weekly benefits and I confirm the General Division decision to that extent.

[5] There was no evidence on which the General Division could confirm that the family supplement was correct, and the General Division reasons did not disclose on what basis it

confirmed the family supplement amounts. The General Division therefore erred in law by failing to provide adequate reasons to justify the basis on which it confirmed the family supplement amounts. I refer this matter back to the General Division for reconsideration.

PRELIMINARY MATTERS

[6] The General Division appeals GE-18-2997 and GE-18-2998 were joined at the General Division based on similar facts and issues, and the two appeals were heard together. Accordingly the Appeal Division also heard the two appeals of the General Division decisions at the same time. The matters are joined at the Appeal Division but this decision concerns only the 2018 claim and the appeal of the General Division decision, GE-18-2997.

ISSUES

[7] Did the General Division overlook or misunderstand that the Claimant was not responsible for the mistake that resulted in her overpayment?

[8] Did the General Division err in law by failing to adequately explain why it confirmed the family supplement amount?

ANALYSIS

[9] 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).

[10] To grant this application for leave and to allow the appeal process to move forward, I must first find that there is a reasonable chance of success on one or more of the grounds of appeal. A reasonable chance of success has been equated to an arguable case.¹

[11] The grounds of appeal under section 58(1) of the DESD Act 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.

Issue 1: Did the General Division overlook or misunderstand that the Claimant was not responsible for the mistake that resulted in her overpayment?

[12] The Claimant did not deny that she received benefits to which she was not entitled in consequence of her employer having provided two separate ROEs to the Commission. However, the Claimant submits that she should not be responsible for repaying the overpayment because she is not responsible for any errors that led to the overpayment.

[13] It is clear that the Claimant has acted in good faith throughout and that she is in no way responsible for the overpayment. As argued by the Commission, and reflected in the Federal Court of Appeal cases cited by the General Division, the law requires that a claimant repay Employment Insurance benefits to which her or she is not entitled, even following a mistake by the Commission.¹ The General Division considered the Claimant's evidence and argument that she was not responsible for the error that resulted in the overpayment. However, the General Division was correct that it had no discretion to write off or extinguish the claim against the Claimant.

[14] I find that the General Division did not err under section 58(1)(c) of the DESD Act by overlooking or misunderstanding the Claimant's evidence.

Issue 2: Did the General Division err in law by failing to adequately explain why it confirmed the family supplement amount?

[15] The General Division understood the Claimant to have claimed that she did not receive the Family Supplement benefit. Having reviewed the Claimant's Notice of Appeal to the General Division and the audio recording of the hearing, I accept that the General Division understood the Claimant's position correctly. The Claimant asked, "Where's my family supplement?"² and

¹ *Lanuzo v Canada (Attorney General)*, 2005 FCA 324; *Canada (Attorney General) v. Villeneuve*, 2005 FCA 440

² Audio Recording of General Division hearing at timestamp 36:20

stated that she was told she didn't get her family supplement because she hadn't paid her taxes,³ which she denied. She later stated that the "family supplement should be taken into consideration in the sense that [she] should have been entitled to more than what they're saying after they cut [her] earnings in half ... the family supplement ... is used to top you up".⁴

[16] The General Division framed the issue as whether the Claimant was entitled to the family supplement,⁵ and the member said in his decisions that he did not understand that the Appellant believes she is entitled to a greater weekly benefit than the \$6.00 that the Commission argued was included in her weekly benefit for the 2018 claim.⁶ However, it would not be possible for the Claimant to dispute the amount of a supplement when she did not know she had received it.

[17] Furthermore, it was not unreasonable for the Claimant to believe she had not received the supplement. In the hearing, the member acknowledged that he could not find any decision on the family supplement in the documents,⁷ and that he may not be able to answer why the family supplement was not considered given the lack of information available to him. The General Division is correct. There is no evidence on the file of a decision on the family supplement, of any calculation supporting the family supplements claimed to have been incorporated to the Claimant's weekly benefit rates, or of any information related to the Claimant's family income or dependents that is necessary to calculate the family supplement.

[18] In finding that the family supplement was included in the weekly benefit for the 2018 claim, the General Division implicitly confirmed that it is the *family supplement to which the Claimant is entitled* that is included. In other words, the General Division also confirmed that the family supplement was calculated correctly.

[19] The General Division did not explain the facts on which it relied to conclude that the Claimant had received the family supplement to which she was entitled, or explain the calculation with reference to section 16 of the EI Act and section 34 of the Regulations or any

³ *Ibid.* at 36:30

⁴ *Ibid.* at 43:50

⁵ General Division decision, para. 7

⁶ General Division decision 18-2997, para. 16

⁷ *Supra note 3.* at 37:30

other applicable law. In my view, the General Division made an error of law under section 58(1)(b) of the DESD Act by failing to provide adequate reasons.

CONCLUSION

[20] The Claimant has established that the General Division erred under section 58(1) of the DESD Act. I will now consider the appropriate remedy.

REMEDY

[21] I have the authority under section 59 of the DESD Act to give the decision that the General Division should have given, refer the matter back to the General Division with or without directions, or confirm, rescind or vary the General Division in whole or in part.

[22] I confirm the General Division decision that the Commission correctly established the Claimant’s weekly rate of benefits for the 2018 claim. I also confirm the General Division decision that the Claimant is required to repay any overpayment she may owe to the Commission that relates to the change in benefit rate.

[23] The record is incomplete in respect of the determination of the Family Supplement. There is no decision and no calculation; only speculation.⁸ The reference to a family supplement in the overpayment breakdown⁹ is not comprehensible or helpful. I return this matter to the General Division for reconsideration.

Stephen Bergen
Member, Appeal Division

HEARD ON:	May 7, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. T., Appellant

⁸ GD3-71

⁹ GD3-74