



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. V. v Canada Employment Insurance Commission*, 2019 SST 581

Tribunal File Number: AD-17-17

BETWEEN:

J. V.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: June 11, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, J. V. (Claimant), established a claim for Employment Insurance benefits because her work hours had been reduced and she had irregular earnings. She reported her earnings and received benefits in some weeks as a supplement to her employment earnings. The Respondent, the Canada Employment Insurance Commission (Commission), determined that it had paid the Claimant more than her benefit entitlement in one reporting period, and it declared an overpayment. The Claimant disagreed, believing that the payment that she received from the Commission was not a benefit payment for that week but actually a retroactive payment related to an earlier reconsideration decision.

[3] The Claimant requested a reconsideration, but the Commission maintained its original decision. The Claimant was also unsuccessful in her appeal to the General Division of the Social Security Tribunal, which dismissed her appeal. This is her appeal of the General Division decision to the Appeal Division.

[4] The appeal is dismissed. The Claimant has not satisfied me on a balance of probabilities that the General Division's reasons are so inadequate as to amount to an error of law, or that the General Division made any other error under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTERS

[5] The Claimant did not appear at the scheduled Appeal Division teleconference hearing. According to the file, the Notice of Hearing was delivered and signed for by the Claimant on May 2, 2019, and I am satisfied that the Claimant had notice of the hearing. I waited for the Claimant to join the hearing and I did not conclude proceedings until approximately 20 minutes after the time the hearing was to commence. During that time, I had a Tribunal Officer attempt to

contact the Claimant. The Officer left a message on the Claimant's voice mail to inform her that the hearing was in progress.

[6] I informed the Commission representative that if the Claimant contacted the Tribunal within seven days with a satisfactory explanation as to why she did not appear at the scheduled time, that I would consider reconvening the hearing. However, the seven days have lapsed and the Claimant has not contacted the Tribunal.

ISSUE

[7] Did the General Division err in law by failing to provide reasons that were responsive to the Claimant's argument?

ANALYSIS

[8] 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 s.58(1) of the DESD Act.

[9] The grounds of appeal are described below:

- 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: Did the General Division err in law by failing to provide reasons that were responsive to the Claimant's argument?

[10] When I granted leave to appeal, I had found an arguable case that the General Division may have erred by providing inadequate reasons. It was arguable that the reasons did not directly address the Claimant's testimony, and her position, that the \$257.00 payment was a retroactive

payment of benefits under section 55(1)(b) of the Employment Insurance Regulations for one of the several weeks that she had been absent from Canada for her husband's funeral.

[11] A representative from the Commission appeared before the Appeal Division to support the General Division's decision and to answer any questions about the appeal. The Commission argued that the onus is on the Claimant to prove that the \$557.28 was not earnings and it emphasized that the issue before the General Division was whether those earnings should have been allocated to the week of May 12, 2013.

[12] Despite the Claimant's belief that the \$257.00 was a payment flowing from a previous reconsideration, the General Division was satisfied that the Claimant received \$557.28 in wages, self-employment earnings and vacation pay,¹ and that it was properly allocated to the week of May 12, 2013.² As a result, the \$257.00 benefit payment for that week was an overpayment.

[13] I cannot find, on a balance of probability, that the General Division's reasons are so inadequate as to amount to an error of law. The reasons disclose that the General Division believed the \$257.00 payment was an overpayment because it was a payment of benefits in relation to a week in which the Claimant also had earnings.³ The payment could not have been both a weekly benefit payment for the week of May 12, 2013, and a late payment related to a different week and resulting from a previous reconsideration. Therefore, the Claimant likely understood that the General Division rejected her contention that the \$257.00 was related to a prior reconsideration.

CONCLUSION

[14] The appeal is dismissed.

[15] I note that the Commission has committed to write off the overpayment under section 56(2) of the *Employment Insurance Regulations*, even though it maintains that the General Division made no error.⁴ Such a write-off will relieve the Claimant of liability to repay the overpayment just as well

¹ General Division decision, para. 20

² *Ibid.* para. 8

³ *Ibid.* para 7

⁴ AD5-1

as if I had found an error in the General Division and determined that the Commission had not overpaid the Claimant.

Stephen Bergen
Member, Appeal Division

HEARD ON:	June 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Angèle Fricker, Representative for the Respondent