



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. G. v Canada Employment Insurance Commission*, 2019 SST 701

Tribunal File Number: AD-19-212

BETWEEN:

**L. G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: August 5, 2019

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] The Appellant, L. G. (Claimant), applied for sick benefits in January 2016, but returned to work the next month. There were three renewal applications for benefits in 2016, which were each granted. Reports were filed while benefits were being paid under those three applications, up to July 2017. Upon investigation, the Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had been working during the periods covered by the three renewal applications. The Commission determined that the Claimant was not entitled to those benefits, so assessed an overpayment of \$20,848.00, and further imposed a penalty of \$5,000.00 for 25 false representations, and a notice of very serious violation.

[3] The Claimant asked that the Commission reconsider its decision. She stated that she was living in an abusive relationship from December 2015 to July 2017, and consuming alcohol excessively due to addiction; that she did not make the three renewal applications, or file any of the reports, or receive any of the EI benefits paid under those renewal applications; that her abusive boyfriend had access to her personal information; and that he made the renewal applications, filed the reports and took the money from her bank account, all without her knowledge or consent. The Commission maintained its initial decision. The Claimant appealed to the General Division.

[4] The General Division concluded that, despite the Claimant's testimony to the contrary, she had made the renewal applications, had filed the internet reports, and had received the EI benefits. It also concluded that the Claimant knew that the statements on the reports were false and that the Commission acted judicially when it imposed the penalty and notice of violation. The General Division finally concluded that the earnings were properly allocated under subsection 36(4) of the *Employment Insurance Regulations* to the weeks for which the Claimant provided the services.

[5] The Claimant was granted leave to appeal. She puts forward that the General Division based its decision on erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it. She puts forward that the General Division decision is based on erroneous assumptions and not evidence. She argues that she was not given the possibility to answer certain assumptions made by the General Division in its decision.

[6] The Tribunal must decide whether the General Division based its decision on erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it. The Tribunal must also decide whether the General Division failed to observe a principle of natural justice.

[7] The Tribunal dismisses the Claimant's appeal.

## **ISSUES**

**Did the General Division fail to respect a principle of natural justice by not giving the Claimant the possibility to answer certain conclusions made in its decision?**

**Does the failure by the General Division to respect a principle of natural justice change the outcome of its decision?**

## **ANALYSIS**

### **Appeal Division's mandate**

[8] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.<sup>1</sup>

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.<sup>2</sup>

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, the Tribunal must dismiss the appeal.

**Issue no 1: Did the General Division fail to respect a principle of natural justice by not giving the Claimant the possibility to answer certain conclusions in its decision?**

[11] The Claimant submits that General Division assumed that she received a T4E slip for the 2016-2017 EI Benefits. It also assumed that she knew of the T4E slip showing the EI benefits and that this affected her credibility. She puts forward that she did not have the opportunity to respond to said assumptions and that she would have testified that, she had never received them.

[12] The Claimant also puts forward that the General Division assumed that the trustee requested to review her bank statements when it did not make such a request. All that was requested from her by the trustee where her balances at the time of the consumer proposal.

[13] The Commission, after listening to the General Division hearing, agrees with the Claimant that the General Division did not discuss with her whether she had access to the T4E slips showing the EI benefits and later determined that it was difficult to believe that the Claimant did not receive them.

[14] For the Tribunal, it is clear that the Claimant did not have the opportunity to present the evidence and arguments she wished to submit to the General Division.

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<sup>2</sup> *Idem.*

[15] Therefore, the Tribunal concludes that the General Division failed to respect a principle of natural justice.

**Issue no 2: Does the failure by the General Division to respect a principle of natural justice change the outcome of its decision?**

[16] The Tribunal finds that the General Division's failure to respect a principle of natural justice does not change the outcome of its decision.

[17] The General Division concluded that, despite the Claimant's testimony to the contrary, she had made the renewal applications, had filed the internet reports, and had received the EI benefits. It also concluded that the Claimant knew that the statements on the reports were false and that the Commission acted judicially when it imposed the penalty and notice of violation. The General Division finally concluded that the earnings were properly allocated under subsection 36(4) of the EI Regulations to the weeks for which the Claimant provided the services.

[18] The Claimant puts forward that the General Division based its decision on erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it. She puts forward that the General Division decision is based on erroneous assumptions and not evidence.

[19] The Tribunal finds that the General Division's analysis was guided by the principles established by the Federal Court of Appeal on similar matters.<sup>3</sup> The Court gave a ruling on situations in which the claimant alleges that their Employment Insurance reports were produced by a third party. The Court held that the question to be answered in all cases where an overpayment exists and where the claimant alleges that fraud has taken place is:

- a) Whether a third party fraudulently caused the Commission to make overpayments and, if so,

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<sup>3</sup> *Canada (Attorney General) v Lylander*, 2008 FCA 365, *Fournier v Human Resources Development Canada*, 2002 FCA 138.

b) Whether the fraud was committed with the claimant's knowledge and with their consent.

[20] The Tribunal wishes to emphasize that the Claimant had the onus of proving that some other person made the applications, filed the reports, and received the benefits, without her knowledge and consent.

[21] It is not in dispute that the direct deposit payments of the EI benefits on all three of the renewal applications relevant to the present matter were made into the Claimant's same bank account as the deposits for the initial application for sickness benefits. That account was in the Claimant's name only. The total sum of \$20,848 was deposited into her personal account from April 2016 to July 2017.

[22] Before the General Division, the Claimant put forward that the ex-boyfriend could have obtained her personal information, as she kept her banking information, PIN number, and EI access code in a book beside her computer at home. After finding out in 2018 about the EI payments of 2016 and 2017, she concluded that her ex-boyfriend had withdrawn the EI payments, which were made on Tuesdays, from her account before she accessed her account on Thursdays. She therefore could not have known about the EI benefits.

[23] However, on more than one occasion, the Claimant admitted that she had no evidence that it was her ex-boyfriend who completed the fraud on her employment insurance claim.<sup>4</sup>

[24] When asked by a Commission investigator in May 2018, if the bank statements would show the withdrawals she claimed were made by her ex-boyfriend, the Claimant replied that they should.<sup>5</sup> She however never proceeded to obtain the banking information to corroborate her version of events. In August 2018, when asking a revision of the Commission's initial decision, the Claimant again did not file her bank statements

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<sup>4</sup> GD3-196, GD3-199.

<sup>5</sup> GD3-200.

in support of her claim that the amounts were immediately withdrawn from her bank account so she could not see them when paying her bills on Thursdays.

[25] The Claimant, in her supplementary representations to the General Division, recognized the importance and relevance of the bank statements to her situation but chose, as far back as May 2018, not to obtain them to show that she was saying the truth and that she was not aware that her ex-boyfriend was committing the fraud.<sup>6</sup> She now argues that she can no longer obtain them since, according to bank norms, it is too late. During the appeal hearing, the Claimant recognized that she did not inform the General Division of her late and unsuccessful attempt to retrieve the bank statements from her financial institution.

[26] The Claimant also testified before the General Division that she has been straight since June 2018, and has been receiving ongoing treatment. She also has not been working since June 2018. In light of those last two statements, the General Division found that her condition should not have prevented her from obtaining these crucial banking documents to confirm her version of events.

[27] The failure of the Claimant in obtaining in due time the banking information, after relying on it specifically as proof of her innocence during the investigation, and after stating that the Commission had ignored a relevant fact by not obtaining them, supports the General Division inference that the documents would not support the Claimant's position and therefore greatly affected her credibility.

[28] The General Division also gave no weight to the Claimant's testimony that she never noticed extra money in her bank account from the EI deposits during the periods in question here: April 3 to 23, 2016; July 3 to September 3, 2016; and November 20, 2016, to July 22, 2017. The total sum of \$20,848 was deposited into her personal account.

[29] The General Division also had doubts about the reliability of the Claimant's testimony since she had previously declared during the investigation held in May 2018, that in 2012, she was coming to work drunk, getting vodka at lunch, and that she could

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<sup>6</sup> GD15-4.

not recall what she did during these periods. She confirmed that when she was with her abusive ex-boyfriend, during the relevant periods, she was still consuming alcohol excessively due to her addiction. The Claimant stated that during these periods, she was not dependable. She also referred to memory issues, and could not recall a number of items.

[30] Based on these considerations, the General Division determined that the Claimant had failed to meet her onus of proving that some other person made the applications, filed the reports, and received the benefits. It therefore concluded that the Claimant had made the renewal applications, had filed the internet reports, and had received the EI benefits.

[31] Case law has consistently held that unless there are particular circumstances that are obvious, the issue of credibility must be left to the discretion of the General Division, which is better able to make a decision on it. The Appeal Division will intervene only if it is obvious that the General Division's decision on the issue is not based on the evidence before it. Although the Claimant did not have the opportunity to explain the fact that she did not receive the T4E slips or to clarify what the trustee requested from her, the Tribunal does not find sufficient reasons to intervene in this case on the issue of credibility as assessed by the General Division.

[32] As stated during the appeal hearing, the Tribunal is also not empowered to retry a case or to substitute its discretion for that of the General Division. The Tribunal's jurisdiction is limited by subsection 58(1) of the DESD Act.

[33] The Tribunal finds that the General Division's decision is supported by the evidence before it, and that it complies with both the legislative provisions and the case law.

[34] For the reasons mentioned above, the Tribunal dismisses the appeal.

## **CONCLUSION**

[35] The appeal is dismissed.

Pierre Lafontaine



Member, Appeal Division

HEARD ON:	July 18, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	L. G., Appellant