



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. W. v Canada Employment Insurance Commission*, 2020 SST 47

Tribunal File Number: AD-19-539

BETWEEN:

A. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: January 21, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant, A. W. (Claimant), applied for and received Employment Insurance benefits for a period of weeks. She was entitled to 22 weeks of benefits based on the regional rate of unemployment in the Southern Alberta economic region. The Claimant disagreed and argued that she had been misclassified. She stated that she lived in the City of Calgary. Calgary is a separate economic region with a higher rate of unemployment. The Claimant would have received more weeks of benefits if she had been classified as resident in Calgary.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), maintained its original decision in its reconsideration decision, and the Claimant appealed to the General Division. The General Division dismissed her appeal and she now appeals to the Appeal Division.

[4] The appeal is allowed. The General Division erred in law by failing to determine whether the Claimant's location had been determined with certainty and it failed to explain why it preferred the Commission's evidence to that of the Claimant.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[5] To allow the appeal, I must find that the General Division made one of the types of errors described in the grounds of appeal. The "grounds of appeal" are outlined below:¹

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.

¹ This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act*.

4. The General Division made an error of law when making its decision.

ISSUES

[6] Did the General Division err in law by failing to make a required finding of fact that the location of Claimant's residence within an economic region could or could not be determined with certainty?

[7] Did the General Division err in law by finding that the Southern Alberta regional rate of unemployment was applicable without evidence that the Commission had located her address within that region with certainty?

[8] Did the General Division err in law by failing to provide reasons for preferring the Commission's evidence over that of the Claimant?

ANALYSIS

[9] The Claimant argued that the Commission assigned an incorrect rate of unemployment to her because its identification of regional rates of unemployment was out of date. The Claimant relied on the dates of source information displayed on the Commission's public-facing webpage.

[10] The General Division obtained information from the Commission that its last regional boundary review was completed in 2018. It found that the Commission was complying with its obligations to review Employment Insurance regional boundaries every five years.² It also said that even if the Commission was not doing so, this would not necessarily mean that the regional boundaries were incorrect. The General Division correctly stated that it had no authority to change the boundaries of Employment Insurance regions.

[11] There was no error of fact or law in these determinations.

Failure to find a necessary fact

[12] The General Division found that the Commission correctly found the Claimant's address to be within the Southern Alberta region. This does not foreclose the possibility that her address may have been too close to the boundary to determine with certainty. The Claimant submitted

² From Section 18 and Schedule I of the Regulations.

evidence that her husband had recently received a Commission decision which confirmed that the exact same address was within the City of Calgary region, This decision was also based on an opinion from the Commission's Employment Insurance Policy group (EIP). This suggests that the Commission may have had difficulty locating the Claimant within one region or the other with certainty.

[13] Section 17(2) of the *Employment Insurance Regulations* (Regulations) speaks to the situation where a Claimant's address is so close to a boundary that it cannot be located within an EI region with "certainty". In such a case, "the regional rate of unemployment that applies to a claimant is the highest of the regional rates that apply in respect of each of the [the neighbouring] regions." If the Claimant's location within regional boundaries could not be determined with certainty, her applicable unemployment rate would have been the rate for the City of Calgary.

[14] The General Division did not consider whether section 17(2) applied in these circumstances. Given the evidence in this case, I accept that this was a failure to make a required finding of fact and therefore, an error of law.

Any evidence of certainty of location

[15] I accept that there was some evidence before the Commission on which it might have found the Claimant's address had been located within the Southern Alberta region with certainty.

[16] The Commission relied on an internal email between an appeal officer and a benefits officer in which the appeal officer states that the EIP confirmed the Claimant's address was in the Southern Alberta region, after a request had been made that the address be "geocoded".³ The appeal officer also made a note of a conversation with a person in EIP who apparently confirmed that the Claimant's address was in the Southern Region. This is found appended to the end of a Regional Rate of Unemployment Certificate.⁴

[17] The General Division did not make an error of law by making a finding of fact that was without any support from the evidence.

³ GD3-21

⁴ GD3-23

Adequacy of reasons

[18] How a claimant is located within a particular region and how the regional rate of unemployment is determined are areas in which the Commission has particular expertise. They are also areas in which it would be difficult for a claimant to produce independent evidence to mount a challenge. However, this does not mean that the General Division may presume the Commission's evidence to be the final word.

[19] The internal email of March 15, 2019 is confusing. It could be interpreted to confirm that EIP received a request to geocode or that it was EIP itself that requested geocoding. In either case, it is not explicit that the Claimant's address had actually been geocoded before the Commission confirmed the Claimant's address. Nor does that email describe what the Commission means when it says that it geocodes an address. The Certificate itself does not "certify" that the Claimant's address is located within the Southern Alberta region. Instead, it presupposes that the Claimant resides in that region and then it certifies only the regional rate of unemployment for the region. Furthermore, the Certificate states only that it has followed section 17(1) which outlines how the rate was derived for a particular region. It says nothing about whether the Commission has complied with section 17(2) of the Regulations, which identifies the process the Commission must use to determine which regional rate to choose, when a person resides so close to a regional boundary that the Commission cannot determine *with certainty* the region in which the person resides.

[20] The Commission's submissions to the General Division were an opportunity for it to clarify its internal processes. Those submissions state that the EIP requested the address be geocoded, and they explain something of what is involved in geocoding. However, the Commission again says that "it was confirmed" that the Claimant resided in the Southern Alberta region. This suggests some uncertainty as to who did the confirming, and therefore what information supported that confirmation. The submissions do not reveal whether this confirmation was a response to data obtained from the geocoding request, or simply the Commission's decision irrespective of whether the geocoding data was received or considered. The submissions do not state that it actually geocoded the Claimant's address.

[21] The General Division gave no reason for preferring the Commission's evidence over the Claimant's evidence. The Claimant provided ample evidence that she was well within the area of Calgary's urban development and that she was considered to live within the City of Calgary for a variety of other purposes. This evidence was of little relevance to whether she was within the City of Calgary region for Employment Insurance purposes, except that it speaks to the plausibility of her assertion. However, the Claimant also provided evidence that the Commission had recently followed EIP advice to determine that her address was within the City of Calgary for Employment Insurance purposes. The Commission did not dispute that it had adjudicated her husband's claim a few months earlier and had used EIP input to find the same address as the Claimant's to be within the City of Calgary.

[22] I find the General Division erred in law by failing to provide adequate reasons for its decision and, specifically; for failing to give reasons for preferring the Commission's assertions over the Claimant's evidence.

[23] Having found errors in the manner in which the General Division made its decision, I must now consider the appropriate remedy.

REMEDY

[24] I have the authority to change the General Division decision or make the decision that the General Division should have made.⁵ I could also send the matter back to the General Division to reconsider its decision.

[25] The Commission states that there is now evidence available that shows the Claimant's location relative to the boundary between economic regions, and has suggested that I may accept new evidence that pertains to a ground on which the leave was granted. However, it did not provide any legal authority for this proposition and I know of none. The Appeal Division is not authorized to consider new evidence.⁶

[26] However, the record is not complete. The General Division did not assess whether the Claimant's location could be determined with certainty to comply with section 17(2) of the

⁵ My authority is set out in section 59 of the DESD Act.

⁶ *Canada (Attorney General) v O'Keefe*, 2016 FC 503; *Marcia v Canada (Attorney General)*, 2016 FC 1367.

Regulations, and the evidence that was before the General Division was not adequate to make this determination. Therefore, I am not in a position to substitute my decision for that of the General Division.

[27] The matter is returned to the General Division for reconsideration. The Commission may submit its additional evidence to the General Division. The Claimant will also be permitted to submit new evidence.

CONCLUSION

[28] The appeal is allowed.

Stephen Bergen
Member, Appeal Division

HEARD ON:	January 2, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES;	A. W., Appellant David Walterson, Representative for the Appellant Angeline Fricker, Representative for the Respondent