



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. M. v Canada Employment Insurance Commission*, 2020 SST 221

Tribunal File Number: AD-18-615

BETWEEN:

G. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 12, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal. The file returns to the General Division for reconsideration on all issues.

OVERVIEW

[2] An investigation revealed that, during three benefit periods, the Appellant G. M. (Claimant) worked and earned wages. The earnings provided by the employer, when matched with the Claimant's declarations, revealed that the Claimant did not declare any earnings while receiving benefits.

[3] The Respondent (Commission) notified the Claimant that the money he received from his employer as wages constituted earnings and allocated them to the weeks worked. Furthermore, the Commission imposed penalties because the Claimant made misrepresentations by knowingly providing false or misleading information. They also issued a notice of violation. There was no penalty or violation issued for the period of March 16, 2014 to August 17, 2014.

[4] The Claimant argued that his estranged spouse, without his consent or knowledge, fraudulently gained access to his access number for 2014, 2015 and 2016. She then directed funds from the benefits into her account, to which he had no access. He has now approached Niagara Regional Police to conduct an investigation. Upon reconsideration, the Commission maintained its initial decision.

[5] The Claimant appealed the Commission decision to the General Division. The General Division concluded that the sums received were from his employer were earnings. It found that the Commission had correctly allocated these earnings to weeks worked according to section 36(4) of the *Employment Insurance Regulations*. The General Division also concluded that the Claimant had knowingly made false statements or representations to the Commission and that the Commission had exercised its discretion in a judicial matter when it imposed a notice of violation.

[6] The Appeal Division granted the Claimant leave to appeal to the Appeal Division. He submits that the General Division failed to observe a principal of natural justice since he did not have the opportunity to present his entire case. He also puts forward that the General Division erred in fact and in law when it concluded that he knew and consented to the actions of his estranged wife and that he had knowingly made false statements or representations to the Commission.

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

ISSUES

[8] Did the General Division fail to observe a principal of natural justice when it did not obtain objective evidence from the regional police and refused to subpoena the estranged spouse?

[9] Did the General Division err when it concluded that he knew and consented to the actions of his estranged wife and that he had knowingly made false statements or representations to the Commission?

ANALYSIS

[10] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

Issue no 1: Did the General Division fail to observe a principal of natural justice when it did not obtain objective evidence from the regional police and refused to subpoena the estranged spouse?

[11] This ground of appeal has no merits.

[12] It is not the role of the General Division to investigate any allegations put forward by a claimant. It is the responsibility of a claimant to prepare his case and to present it to the General Division.

[13] Furthermore, if a claimant wishes to examine a person, it is up to the claimant to have that person appear as a witness. The General Division does not have the authority to issue a subpoena in order to compel an individual to testify on behalf of a party.

[14] The role of the General Division is to examine the evidence presented by both parties in order to identify the relevant facts, namely, the facts that concern the particular dispute that it must decide, and to explain in writing the decision that it made concerning these facts.

[15] For the above-mentioned reasons, the Tribunal finds that the General Division did not fail to respect a principle of natural justice.

Issue no 2: Did the General Division err when it concluded that he knew and consented to the actions of his estranged wife and that he had knowingly made false statements or representations to the Commission?

[16] The Claimant puts forward that his estranged spouse, without his knowledge or consent, filed for his employment insurance benefits and completed his reports and directed the benefits into her own bank account for her personal benefit.

[17] The Commission submits that in cases where a claimant alleges that they have been the victim of fraud, such as in this case, the General Division is required to consider and to answer two questions: whether a third party fraudulently caused the Commission to make the overpayments and if so, whether the fraud was committed with the claimant's knowledge and consent.¹

¹ *Canada (Attorney General) v Lylander*, 2008 FCA 365.

[18] The Commission respectfully submits that the General Division decision is flawed given it failed to consider or apply this stated case law. Consequently, it is of the view that there is an error in law.

[19] Furthermore, the Commission respectfully submits that the General Division did not justify its determinations, address the issues presented carefully and explain its findings in a coherent and consistent manner.

[20] The General Division's role is to consider the evidence that both parties have presented to it, to determine the facts relevant to the particular legal issue before it and to articulate, in its written decision, its own independent decision with respect thereto.

[21] The General Division must clearly justify the conclusions it renders. When faced with contradictory evidence, the General Division cannot disregard it. It must consider it. If it decides that the evidence should be dismissed or assigned little or no weight at all, it must clearly explain the reasons for its decision.²

[22] In this case, the General Division disregarded the Claimant's evidence in its analysis. The Claimant attempted to demonstrate that he was not aware of the actions of his estranged spouse. The General Division ignored the Claimant's initial statement that he thought he was the only one in his household who had access to his filing information and that he took the necessary measures to avoid any repetition. The evidence shows that most reports were filed when he was at work. The Claimant also stated that he had checked his bank account and could not see any EI Benefits deposits. He filed bank statements to support his position that he did not receive any EI benefits. The Claimant also filed a letter from his estranged spouse stating that she would assist him with his debt.

[23] The Tribunal is of the opinion that the General Division erred in law in disregarding the Claimant's evidence without explanation and in failing to fully consider, in its analysis, the question raised by the Claimant as to whether the fraud was committed

² *Bellefleur v Canada (Attorney General)*, 2008 FCA 13; *Parks v Canada (Attorney General)*, A-321-97.

with his knowledge and consent. The Tribunal also finds that the General Division rendered a decision without regard for the material before it.

[24] For the above-mentioned reasons, and since the Tribunal is convinced that the factual findings are incomplete, the Tribunal is justified to refer the matter to the General Division for reconsideration on all issues.

CONCLUSION

[25] The Tribunal allows the appeal. The file returns to the General Division for reconsideration on all issues.

[26] The Appeal Division recommends that since there are three (3) separate reconsideration decisions, that the General Division assign a separate file number to each one (GD3-78 to GD3-79 and GD7-12 to GD7-13).

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	March 1, 2019 October 8, 2019 March 4, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. M., Appellant D. R., representative for the Appellant Suzanne Prud'homme, representative of the Respondent