



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Z. T. v Canada Employment Insurance Commission*, 2020 SST 262

Tribunal File Number: AD-19-649

BETWEEN:

**Z. T.**

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: March 27, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal dismisses the appeal.

### **OVERVIEW**

[2] The integrity department of Service Canada started an investigation, which revealed that several records of employment issued under nine different company names were fraudulent. There was no evidence of any bona fide business, or any work performed for any of these companies.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Appellant, Z. T. (Claimant), submitted fraudulent records of employment to establish two claims for benefits in 2009 and 2010. As a result, the Commission cancelled the previous benefit periods commencing on October 11, 2009, and November 28, 2010. It imposed monetary penalties for making 23 misrepresentations and issued a notice of violation. However, on reconsideration, the Commission removed one of the monetary penalty for the misrepresentation and changed it to a non-monetary penalty. The Claimant appealed to the General Division.

[4] The General Division concluded that the Commission correctly cancelled and voided the benefits periods commencing on October 11, 2009, and November 28, 2010. It further concluded that the Claimant had knowingly made false or misleading statements on his applications for benefits, records of employment and claim reports because he was aware that he had not performed any work for either of the two businesses and that the records were false. The General Division finally concluded that the Commission exercised its discretion in a judicial manner.

[5] The Tribunal allowed leave to appeal of the General Division's decision. The Claimant put forward that the General Division had failed to observe a principle of natural justice since the interpreter had not provided proper and/or adequate translation.

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

## **ISSUES**

[7] Did the General Division fail to observe a principal of natural justice because the interpreter did not provide proper and/or adequate translation?

[8] Did the General Division fail to observe a principal of natural justice because the Claimant did not receive full disclosure of all documents prior to the hearing?

[9] Did the General Division base 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?

## **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:

(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 had made in a perverse or capricious manner or without regard for the material before it.

## **PRELIMINARY REMARKS**

[11] The Appeal hearing started on January 12, 2020. It was schedule to continue on March 12, 2020. Prior to the second part of the hearing, the parties advised the Tribunal that they no longer needed to present oral submissions.

[12] The Tribunal listened to the General Division hearing that took place on July 30, 2019 and August 19, 2019, in order to decide the merits of the Claimant's grounds of appeal.

**Issue no 1: Did the General Division fail to observe a principal of natural justice because the interpreter did not provide proper and/or adequate translation?**

[13] This ground of appeal has no merits.

[14] The Claimant initially put forward that the interpreter did not provide proper and/or adequate translation. He submitted that because of the poor translation, he was not able to convey pertinent information and therefore, the General Division based its decision on erroneous facts. He put forward that because of the interpreter he did not have the opportunity to participate fully in the proceedings and that he did not get a fair hearing.

[15] At the Appeal hearing, the Claimant put forward that his explanations were not clearly understood by the General Division because of the translation and inappropriate conclusions were drawn from the evidence.

[16] As important as the right to an interpreter is, the burden on a person raising interpretation issues is significant.<sup>1</sup> In instances where the claimant is aware that there is a difficulty with the interpreter, it is reasonable to expect the claimant to object immediately.<sup>2</sup>

[17] At the beginning of the General Division hearing, the Claimant stated that he did not really need an interpreter. He offered to question the interpreter only if he did not understand the English words used during the hearing. The General Division member nonetheless requested that the interpreter translate every word to make sure the Claimant participated fully in the hearing.

[18] The Claimant did not raise any issues with the interpreter during the hearing. He often answered questions before the end of the translation. His representative did not raise any objection regarding the interpreter's performance and did not address any issues related to the English translation of the answers given by his client.

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<sup>1</sup> *Xu v Canada (Citizenship and Immigration)*, 2007 FC 274.

<sup>2</sup> *Nsengiyumva v Canada (Minister of Citizenship and Immigration)*, 2005 FC 190.

[19] The Tribunal finds that the Claimant had the opportunity to present his evidence and arguments. He also had the opportunity to respond to the Commission's allegations. He had the opportunity to participate fully in the proceedings and he had a fair hearing.

[20] For the above-mentioned reasons, the Tribunal finds that the Claimant did not meet his burden.

[21] The Tribunal will further address the Claimant's arguments that the General Division drew inappropriate conclusions of facts under issue number 3.

**Issue no 2: Did the General Division fail to observe a principal of natural justice because the Claimant did not receive full disclosure of all documents prior to the hearing?**

[22] This ground of appeal has no merits.

[23] The Claimant puts forward that the General Division member submitted him to an important line of questioning prior to the full disclosure of the appeal docket. Therefore, the General Division failed to observe a principal of natural justice.

[24] At the beginning of the General Division hearing, the Claimant's representative stated to the member that he had received all documents from the Tribunal and that he was ready to proceed. The Claimant then started to present his evidence.

[25] Later in the hearing, the General Division member referred to certain documents in order to get precisions from the Claimant. The representative then stated that he did not have these documents. The member immediately interrupted the hearing. The member then adjourned the hearing to the following month in order that proper divulgation take place before asking any precisions on the undisclosed documents.

[26] The Tribunal finds that the General Division proceeded appropriately to preserve the Claimant's rights to a fair hearing. The Claimant suffered no prejudice. The General Division adjourned the hearing to make sure the Claimant received complete divulgation. It also permitted the Claimant to prepare his defence before answering any questions related to the undisclosed documents.

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

**Issue no 3: Did the General Division base 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?**

[28] Before the General Division, the Claimant denied that he was involved and argued that the fraudster is a woman named I. C. who completed his 2010 taxes. He argued that I. C. stole his personal information from his tax return and initiated two employment insurance claims in his name without his knowledge and consent.

[29] The General Division concluded that it was more likely than not, that he was a willing participant with I. C. in the scheme.

[30] The Claimant submits that the General Division based its decision on several erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[31] The Claimant disputes the General Division finding that he did not tell the police I. C.'s name. He submits that he did tell the police her name and testified in this regard at the hearing.

[32] The evidence shows that the Claimant did not inform the police once he found out that it was I. C. who did the fraud because the Service Canada investigators did not ask him to do it. This confirms that he did not mention the name of I. C. when he filed the police report of afterwards. He also mentioned that he did not follow-up with the police on the result of the investigation.

[33] The Claimant also disputes the General Division's finding that he permitted I. C. to commit fraud by providing his mother's maiden name.

[34] The evidence shows that there was no other way for I. C. to know the mother's maiden name. During his testimony, the Claimant confirmed that I. C. did not need to

know his mother's maiden name to do his personal taxes. He did not recall her asking and stated that he had never before provided this information to complete his taxes.

[35] The Claimant further disputes the General Division finding that he provided no clear response or explanation as to why he used I. C. to complete his taxes.

[36] While it is true that the Claimant testified that his regular accountant was out of the country, the General Division found that there was no urgency for him to use the services of an unknown person considering that he had a long history with his accountant.

[37] The General Division found that he did not offer a reasonable explanation as to why he did not wait for his regular accountant to be available, specially that the Claimant did not declare any self-employment income in 2010. Furthermore, his regular accountant that was allegedly out of the country at the time could not recall why he did not do the Claimant's personal taxes in 2010.

[38] The Claimant finally disputes the General Division finding that he failed to submit a request to obtain an unredacted police incident report. He argues that he testified that the police told him that the Commission could obtain one. He puts forward that he could not legally obtain one.

[39] While it is true that the Claimant testified that the police informed him that the Commission could request an unredacted version of the report, he never personally requested an unredacted copy. The police officer had provided him with a phone number to call and a note referring to the *Freedom of information and Protection of Privacy Act*. The Claimant never mentioned during his testimony that he did not ask for the unredacted report because he could not legally obtain one. The evidence supports the General Division finding that the Claimant did not attempt to file a request to obtain an unredacted police report.

[40] After review of the evidence, the Tribunal finds that the following facts support the General Division's conclusion that the Claimant was not a victim of identity fraud and that he was a willing participant with I. C. in the scheme:

- The employers denied issuing records of employment for the Claimant;
- The Claimant admitted that he never worked for the employers;
- I. C. is a central figure to the fraud scheme;
- A claim for benefits was established in 2009 and 2010 and the Claimant's mother's maiden name was used to establish those claims;
- The Claimant established a benefit period in October 2019, before a friend allegedly referred him to I. C. for tax purposes in 2010;
- In order to assist the Client Information Session, the Claimant had to show two pieces of identification, one being a photo ID for entrance;
- The EI benefits were deposited into bank accounts that belonged to I. C.;
- The Commission cancelled the benefit periods effective November 28, 2010, and October 11, 2009, because the information on the Claimant's records of employment used to establish the claims were false and there was no evidence of any bona fide business or any work performed;
- The Claimant's mother's maiden name is not required to file a tax return and not mentioned in the 2010 income tax report prepared by I. C.;
- The Claimant received T4E's slips that attest that he received EI benefits; these amounts are declared in his personal income tax reports of 2010 and 2011;
- The Claimant signed and filed the 2010 income tax report even though it mentioned in its first page that he was in common law with I. C. and not single;
- The Canada Revenue Agency had previously made multiple attempts to contact the Claimant, and made contact as early as 2014, and he took no action;



- The Claimant did not ask the Canada Revenue Agency to re-evaluate or recalculate his 2010 or 2011 tax returns even though he disputes receiving any employment insurance monies as reported in his taxes;
- The Claimant did not submit his notice of assessments and re-assessments, but he only submitted his tax returns from 2009 to 2011;
- The Claimant only filed a police fraud report in June 2017 upon the insistence of the Commission;
- The Claimant did not follow-up on the police investigation regarding his alleged stolen identity after his initial complaint;
- The Claimant did not follow-up on the Commission's request that he supply his credit bureau to support that he was the victim of an identity fraud although he was provided with the contact information;
- The conclusion of the SIN-fraud investigation was that there was insufficient evidence to support that the Claimant was a victim of fraud.

[41] The General Division found that the Claimant had failed to prove that he was a victim of identity fraud. It found that the Claimant did not prove that he did not complete the applications for benefits in 2009 and 2010 or that he did not have knowledge of them. He also did not prove he did not collect or benefit from EI payments.

[42] The General Division determined that the preponderant evidence demonstrates that the Claimant had to give I. C. access to his personal information, specifically his mother's maiden name and other relevant information, to allow her to initiate employment insurance claims in his name in 2009 and 2010.

[43] The General Division found that the Claimant's conduct was not demonstrative of someone who is victim of identity fraud, but rather someone who is limiting his exposure and disclosure.

[44] Based on these considerations, the General Division also determined that the Claimant knowingly made false or misleading on his application for benefits, records of employment, claim reports because he was fully aware that he had not performed any work for either of the two businesses, and that the records were false.

[45] The General Division finally determined that the Commission exercised its discretion in a judicial manner when they imposed a warning letter, a monetary penalty of \$5,000.00 and notice of violation classified as “very serious.

[46] Case law has consistently held that unless there are particular circumstances that are obvious, the issue of credibility must be left to the General Division’s discretion, 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.

[47] The Tribunal does not find sufficient reasons to intervene in this case on the issue of credibility as assessed by the General Division.

[48] As stated during the Appeal Division 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.

[49] The Tribunal finds that the General Division decision is based on the evidence submitted before it, and that it complies with both the legislative provisions and the case law.

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

## **CONCLUSION**

[51] The Tribunal dismisses the appeal.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	January 28, 2020
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	Z. T., Appellant  Eldald Gerb, Representative for the Appellant  Angèle Fricker, Representative for the Respondent