



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. S. v Canada Employment Insurance Commission*, 2020 SST 773

Tribunal File Number: AD-20-738

BETWEEN:

**D. S.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

---

Leave to Appeal Decision by: Shirley Netten

Date of Decision: September 9, 2020

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is granted, and the appeal on the question of jurisdiction is allowed.

### BACKGROUND

[2] D. S. (Claimant) received Employment Insurance (EI) benefits from July 2017 to July 2018. In February 2019, the Canada Employment Insurance Commission (Commission) learned that the Claimant had received \$91.50 in earnings for orientation sessions in September 2017 with X. The Commission went on to conduct an investigation which resulted in:

- An allocation of the X earnings for the week of September 17, 2017;
- A retroactive disentitlement from September 2017 to April 2018, for not being available to work while at school;
- A retroactive indefinite disqualification for voluntarily leaving employment at X without just cause (effectively reversing benefits from September 2017 to July 2018); and
- A determination that the Claimant knowingly made two false representations, resulting in a monetary penalty and a very serious violation.

[3] Following a request for reconsideration, the Commission confirmed its decisions about the disentitlement and disqualification, and reduced the penalty for misrepresentations to a warning. The Claimant appealed to the General Division. His representative asked the General Division to consider all of the issues initially decided by the Commission.

[4] In an interim decision, the General Division decided that its jurisdiction included only the issues of availability, voluntary leave without just cause, and the penalty for misrepresentation. The Claimant sought leave to appeal that decision to the Tribunal's Appeal Division.

[5] The Commission has since issued a further reconsideration decision in which it rescinded the Claimant's violation.

## **AGREEMENT**

[6] The parties participated in a settlement conference. The Claimant does not dispute the allocation of the X earnings for the week of September 17, 2017, nor does he dispute the cancellation of the violation. The parties agree that the General Division has jurisdiction over the outstanding issue of the finding that the Claimant knowingly made misrepresentations.

[7] The parties' agreement is consistent with the evidence on file. The Tribunal should take a broad approach to its jurisdiction, within the limits of the law, to manage appeals fairly and efficiently.<sup>1</sup> It may be necessary to consider the underlying decisions to determine the scope of the reconsideration, particularly when (as in this appeal) a reconsideration decision is not detailed. The Commission issued an initial decision that the Claimant had knowingly made two misrepresentations, resulting in a penalty and violation. While the reconsideration decision mentioned the penalty and not the misrepresentations, the finding of misrepresentation and its consequences are intertwined. Moreover, the Commission implicitly confirmed its initial determination that the Claimant had knowingly made misrepresentations, since it issued a (reduced) penalty against him. I agree that the reconsideration decision encompassed the issue of knowing misrepresentation.

[8] Consistent with the parties' agreement, I am granting leave to appeal and allowing the appeal on the basis of an error of jurisdiction. I am substituting my decision for that of the General Division: the General Division has jurisdiction over the issue of whether the Claimant knowingly made misrepresentations. The Claimant's appeal can now resume at the General Division with this issue added to the existing issue agenda.

---

<sup>1</sup> *M. L. v Minister of Employment and Social Development*, 2020 SST 281

**CONCLUSION**

[9] Leave to appeal is granted, and the appeal on the question of jurisdiction is allowed. The General Division has jurisdiction over the issue of whether the Claimant knowingly made misrepresentations.

Shirley Netten  
Member, Appeal Division

REPRESENTATIVES:	C. J., for the Applicant  Rachel Paquette, for the Respondent
------------------	---