



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *DK v Canada Employment Insurance Commission*, 2021 SST 135

Tribunal File Number: AD-21-22

BETWEEN:

D. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: April 6, 2021

DECISION AND REASONS

DECISION

[1] I am allowing the appeal. The General Division failed to exercise its jurisdiction and I am returning the matter to the General Division to reconsider its decision.

OVERVIEW

[2] The Applicant, D. K. (Claimant), was collecting regular Employment Insurance benefits at the time he injured his ankle on January 4, 2020. The Claimant was troubled by his ankle but he did not seek medical treatment until mid-February 2020. That was when he discovered that his ankle was broken. He then had it surgically repaired and cast. In July 2020, the Claimant told the Respondent, the Canada Employment Insurance Commission (Commission), what had happened with his ankle.

[3] The Commission converted the Claimant's regular benefits to sickness benefits effective January 5, 2020,¹ and gave the Claimant benefits until he reached the maximum number of weeks of sickness benefits for his benefit period. The Commission later sent the Claimant a decision letter to confirm that the Claimant was not entitled to regular benefits after March 23, 2020. By March 23, the Claimant had exhausted his sickness benefits. However, the Commission did not accept that the Claimant had recovered to the point that he could work, so it decided it should not have paid him regular benefits after March 23. The Commission asked the Claimant to repay the regular benefits that it had paid him for the period after March 23, 2020.

[4] The Claimant asked the Commission to reconsider but the Commission did not change its decision. The Claimant appealed to the General Division, which found that the Claimant was not capable of work from March 23, 2020, until June 14, 2020.

[5] The Claimant is now appealing to the Appeal Division. He argues that the General Division made a mistake in finding that his sickness benefits were correct. He submits that he was capable of work between his January 4 injury and the date of his surgery. He believes that the Commission should not have converted his regular benefits to sickness benefits until mid-

¹ GD3-138

February. This would mean that he would have been entitled to sickness benefits over a period that would start later, and therefore end later.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[6] “Grounds of appeal” are the reasons for the appeal. To allow the appeal, I must find that the General Division made one of these types of errors:²

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

ISSUE

[7] Did the General Division make an error of jurisdiction by refusing to consider the nature of the Claimant’s benefit entitlement in the period before March 23, 2020?

ANALYSIS

Jurisdiction

[8] The General Division understood that the Claimant disagreed with the Commission’s decision to convert his regular benefits to sickness benefits for the six weeks immediately following his ankle injury.

[9] However, the General Division member told the Claimant that she could only consider whether the Claimant was capable of and available for work from March 23, 2020. She said that her authority was limited to consider only the time from March 23, 2020. The member explicitly directed the Claimant to focus on the period after March 23, 2020.

² 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* (DESD Act).

[10] The Commission is conceding that the General Division failed to exercise its jurisdiction. The Commission acknowledged that it had based its own decision to disentitle the Claimant to benefits on a finding that the Claimant was still incapable of working when his sickness benefits ran out. The Commission submits that the decision that the Claimant appealed to the General Division was “intrinsically linked” to the Commission’s decision to convert his regular benefits to sickness benefits effective January 4, 2020.

[11] I agree with the Commission that the General Division made an error of jurisdiction by refusing to consider the period before March 23, 2020.

[12] The reconsideration decision confirmed that the Claimant was not entitled to benefits after March 23 because he was not capable of working, and therefore unavailable. By implication, this decision also included the termination of the Claimant’s sickness benefits. The date that a claimant’s sick benefits must end depends on when they begin, because only a certain number of weeks of sick benefits are available in total. The end of the Claimant’s sick benefits in this case, depended on the date the Commission converted his regular benefits to sickness benefits. No other decision addressed the date that the Commission first converted his regular benefits to sickness benefits.

[13] By failing to consider the period before March 23, the General Division did not consider whether the Commission had properly converted the Claimant’s regular benefits to sickness benefits as early as January 4, 2020. The Claimant disputes the date of the conversion of his benefits. He argued that he remained capable of work from the date of his injury until mid-February 2020. If the Commission had delayed his conversion to sickness benefits until mid-February 2020, the Claimant may still have been entitled to several weeks of sickness benefits after March 23, 2020.

[14] I note that the General Division also found that the Commission correctly determined the Claimant’s entitlement to sickness benefits. I have already found that the General Division made an error of jurisdiction. However, if this General Division finding convinced me that the General Division had actually considered whether the Commission properly converted the Claimant’s benefits, I would still have found an error. The General Division’s finding would be inconsistent

with its own view of its jurisdiction, and with its directions to the Claimant.³ I would have found either that the General Division made an error of law by giving internally inconsistent reasons, or that it made a natural justice error by interfering with what might have been relevant testimony about the period before March 23.

Other Issues

[15] The Claimant argued that the Commission had made several errors in how it originally converted his regular benefits to sickness benefits. He believes his evidence was misinterpreted and that the Commission failed to investigate the circumstances of his injury.

[16] However, I have found that the General Division made an error of jurisdiction when it refused to consider when his sickness benefits should have begun. The General Division interfered with the Claimant's ability to provide additional evidence about the circumstances of his injury.

[17] In my view, the Claimant did not raise any concern with the General Division decision itself that would not be covered by, or included within, the General Division's refusal to consider the broader context of the Commission's reconsideration decision.

Summary Of Errors

[18] I have found that the General Division made an error of jurisdiction. This means that I must now consider what I should do to remedy that error.

REMEDY

[19] I have the authority to change the General Division decision or make the decision that the General Division should have made.⁴ I could also send the matter back to the General Division for it to reconsider its decision.

[20] Because the General Division interfered with the Claimant's ability to testify about the period before March 23, 2020, the Commission suggested that I should return it to the General

³ General Division decision, paras 14, 15.

⁴ My authority is set out in sections 59(1) and 64(1) of the DESD Act.

Division. The Commission also acknowledged that it had not done a fulsome investigation into the circumstances of the Claimant's injury or of when he first became incapacitated by his injury. The Commission thinks the Claimant has not had a sufficient opportunity to provide evidence to support his argument that his regular benefits should have been converted to sickness benefits until his ankle surgery.

[21] I understand that the Claimant would prefer that I make the decision so that the appeal process can come to a close. However, I agree with the Commission that I must return the matter to the General Division for a reconsideration. I do not think the Claimant has had a fair opportunity to present evidence about the onset of his incapacity, so I cannot make a decision based only on the evidence that was before the General Division.

CONCLUSION

[22] I am allowing the appeal and returning the matter to the General Division for reconsideration.

[23] As part of its reconsideration, the General Division shall determine when the Claimant was first incapacitated by his ankle injury and how this affects the date that he would have exhausted his sickness benefits.

Stephen Bergen
Member, Appeal Division

HEARD ON:	March 25, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. K., Appellant Jose Lachance, Representative for the Respondent