Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *RP v Canada Employment Insurance Commission*, 2021 SST 186

Tribunal File Number: AD-18-460

BETWEEN:

R. P.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: May 7, 2021

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant (Claimant), R. P., is a retired paralegal. He is appealing the General Division's decision of June 5, 2018. The General Division summarily dismissed the Claimant's appeal of the reconsideration decision[1] of the Canada Employment Insurance Commission (Commission).

[3] The General Division found that the Claimant was not entitled to employment insurance benefits. He had yet to fulfill all of the requirements under section 50 of the *Employment Insurance Act*.

[4] In particular, the General Division found that the Commission required the Claimant to attend an interview in July 2016, but that he failed to attend.[2] The Commission had requested the interview "to confirm [the Claimant's] identity and confirm the accuracy of [his] S[ocial] I[nsurance] N[umber]."[3]

[5] The Claimant says that the Commission did not have the authority to require him to attend another interview. He had already attended an interview in July 2014. He also claims that he had already provided the Commission with the information that it required. He also claims that he had already established his identity and that Service Canada was mistaken about the need to validate his Social Insurance Number.

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[1] Commission's reconsideration decision dated September 14, 2016, at GD3-38.
[2] The Commission made the request under section 50(6) of the *Employment Insurance Act*. That section reads, "The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.
[3] Commission's letter dated July 7, 2016, at GD3-32.

[6] Because the Claimant did not attend the interview in July 2016, the Commission decided that it did not have enough information from the Claimant to establish a claim. As a result, it decided that he was disentitled to employment insurance benefits.

[7] The General Division found that it was up to the Commission to determine whether there was any outstanding information it required from the Claimant. It found did not have any discretion to waive or vary the Commission's requirement that the Claimant attend for an interview. The General Division also found that it did not have any discretion to grant any of the remedies that the Claimant sought.

[8] The General Division concluded that the Claimant's appeal was preordained. It did not matter what evidence or arguments he might have presented at the hearing. The General Division determined that it had no choice but to summarily dismiss the appeal.

[9] The Claimant argues that the General Division made procedural, jurisdictional, legal, and factual errors. The Claimant asks that his appeal be allowed and that the Commission be ordered to pay him employment insurance benefits immediately, without any conditions.

[10] The Claimant has not established that the General Division made any jurisdictional, procedural, legal, or important factual errors. I am therefore dismissing his appeal.

PRELIMINARY MATTERS

[11] The Claimant filed numerous documents in this proceeding before me. Some of the documents are "new," in that the General Division did not have copies of them when it made its decision. Generally, new evidence is inadmissible at the Appeal Division.

[12] The Appeal Division considers new documents only under exceptional circumstances. But, the documents have to relate to the grounds of appeal under section 58(1) of the *Department of Employment and Social Development Act* (DESDA).[4] These might include cases in which documents show that the Claimant did not receive a fair hearing at the General Division. New

[4] *Marcia v Canada (Attorney General)*, 2016 FC 1367.

documents do not give a party the chance to re-argue their case, or to bolster arguments they made at the General Division.

[13] The Claimant relies on the new documents. He says they support his claims that there was no basis for the Commission to require him to attend another in-person interview.

[14] The Commission asked the Claimant to attend an interview so it could confirm his identity and the accuracy of his Social Insurance Number. The Claimant claims that the new documents show, among other things, that his Social Insurance Number was not dormant. For instance, Canada Revenue Agency accepted tax returns that he regularly filed. He claims that CRA would not have accepted his tax returns for filing if he did not have an active Social Insurance Number.

[15] The Claimant produced a copy of a letter dated July 17, 2018 from Service Canada.[5] The letter was written little more than a month after the General Division made its decision. Service Canada informed the Claimant that it had removed the dormant flag from his Social Insurance Number file. The letter indicated that Service Canada had attached the confirmation of his Social Insurance Number.

[16] The Claimant claims that Service Canada's July 17, 2018 letter proves that there is no need for him to attend at Service Canada's offices to confirm the accuracy of his Social Insurance Number.

[17] The Claimant is relying on the "new" documents, particularly the July 17, 2018 letter, to bolster his claims that the Commission did not have any basis to require him to attend the 2016 interview.

[18] This does not constitute a basis upon which I may consider this new evidence. There are no exceptional circumstances either. I will not be considering any new documents and will consider only those that were before the General Division.

[5] Letter dated July 17, 2018, from Service Canada to the Claimant, at AD12-75.

ISSUES

[19] The issues are:

1. Was the General Division process fair?
2. Did the General Division fail to consider whether there was a valid basis for the Commission's demand that the Claimant attend an interview?
3. Did the General Division fail to consider or apply the doctrine of *res judicata*?
4. Did the General Division misinterpret section 50(6) of the *Employment Insurance Act*?
5. Did the General Division misinterpret section 50(9) of the *Employment Insurance Act*?
6. Did the General Division base its decision on any important factual errors?

ANALYSIS

[20] Section 58(1) of the DESDA lets the Appeal Division intervene in General Division decisions. But, this happens in only a limited set of circumstances. The section lets the Appeal Division intervene if there are jurisdictional, procedural, legal, or factual errors.[6] The section does not give the Appeal Division any authority to conduct any reassessments.

[21] The Claimant argues that the General Division made several mistakes under section 58(1) of the DESDA.

1. Was the General Division process fair?

[22] The Claimant argues that the process at the General Division was unfair and that the General Division member acted in bad faith, for an improper purpose or motive, and in a

[6] In the case of factual errors, the Appeal Division may intervene under subsection 58(1)(c) of DESDA if the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

discriminatory manner. He claims the Social Security Tribunal lacks independence and does not operate at arm's length from either the Commission or Service Canada.

a. Did the Tribunal give the Commission unfair access to its files?

[23] The Claimant submits that, because of the Tribunal's relationship with the Commission and Service Canada, the Commission enjoys unrestricted access to the Tribunal's data and files. He claims that Commission and Service Canada can access data and files without ever having to ask the Tribunal for them. He claims this is possible through use of a shared computer system that Service Canada controls. Claimants do not have any access to the shared computer system. They have to ask the Tribunal for any documents.

[24] The Claimant also argues that the Tribunal sends notices and documents to the Commission before it sends them to applicants.

[25] The Claimant wrote to the Tribunal about its electronic filing procedure. The Administrative Tribunals Support Services Canada (ATSSC) responded. The ATSSC is the administrative support arm for several federal administrative tribunals, which includes the Social Security Tribunal.

[26] The Claimant claims that the ATSSC confirmed that the Commission receives direct access to the Tribunal's files, something unavailable to him or other applicants. The ATSSC responded to the Claimant as follows:

> … With respect to the Canada Employment Insurance Commission, we use the same Government of Canada IT platform, and are subject to the same IT security parameters. This allows us to share letters and submissions with the CEIC using a secure, shared drop-box platform. These platforms are not accessible outside of internal Government of Canada networks.
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> Where the CEIC is seeking information on the Tribunal's files, the methods available to the CEIC to communicate with the Tribunal are identical to those available to you: email, mail, phone or fax. Our contact information is available on our website.[7]

[7] Email from Administrative Tribunals Support Services Canada to the Claimant, dated September 11, 2018, at AD12-81.

[27] I do not see the relevance of these allegations to the appeal before me. Even if the Claimant's allegations about the Commission's access to the Tribunal's files could be substantiated, they have no bearing on any of the issues, nor would they be conclusive proof of any bias.

[28] That said, while the Tribunal uses the same IT platform and is subject to the same IT security parameters, that does not give the Commission (or Service Canada) increased access to the Tribunal's files. If the Commission wants information from the Tribunal, it must go through the same channels as applicants. It does not have a backdoor route to the Tribunal, nor does it enjoy any privileges that are unavailable to applicants.

[29] The ATSSC stated that it shares letters and submissions with the Commission using a shared drop-box platform. In practice, that simply means the Tribunal sends an email to the Commission, at or about the same time that it sends email to a claimant.

[30] The Tribunal's emails simply let the Commission know that documents are available in the shared folder. The Commission can then obtain the documents through the drop-box. This enhances security of transmission, but it does not result in greater access to the Tribunal's data or files.

[31] The Tribunal strives to send communications to parties as quickly as it can, so it encourages email communications wherever possible, as it is the most efficient means of communications.

[32] Some claimants do not have email or will not accept email communications. In that case, the Tribunal sends documents by mail or by courier, at or about the same time as email.

[33] The Tribunal recognizes that regular mail service is typically slower than other forms of communication. For instance, if it sends a decision by email or other electronic means, it deems that decision to have been communicated the next business day after the day on which the Tribunal transmitted it.[8] But, if the Tribunal sends a decision by ordinary mail, it deems that

[8] Section 19(1)(c) of the *Social Security Tribunal Regulations*.

decision to have been communicated 10 days after the day on which the Tribunal mailed it to the party.[9]

[34] I am not satisfied that the Tribunal or the member acted in bad faith, that it discriminated against the Claimant, or that it gave any preferential treatment to the Commission in the way that it communicated with the parties.

b. Was there a reasonable apprehension of bias or did the member act in bad faith?

[35] The Claimant submits that there was a reasonable apprehension of bias or the General Division member acted in bad faith because the General Division member did not fully analyze the issue over his Social Insurance Number and birth date, ignored evidence, and forced him to pursue two separate appeals.

[36] One of the Claimant's appeals concerns his application for Employment Insurance benefits, while his other appeal concerns his claim to an Old Age Security pension and guaranteed income supplement.[10] The Claimant argues that the parties and facts were the same in both cases, so the General Division should have let him combine his appeals.

[37] Bad faith may exist, depending upon the circumstances. Signs of bad faith may include, but are not limited to ignoring evidence, considering irrelevant factors, or acting arbitrarily or in a discriminatory manner. Denying a claim or of a request will not, on its own, establish bad faith. Bad faith also will not be found if the decision-maker's decision or denial of a request was reasonably supported by evidence and was based on a reasonable interpretation of the law, and if the decision-maker was seen as acting reasonably and fairly.

[38] As for whether a reasonable apprehension of bias exists, the test is as follows:

> What would an informed person, viewing the matter realistically and practically –and having thought the matter through—conclude? Would he think that it is more likely than not that the decision maker, whether consciously or unconsciously, would not decide fairly?[11]

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[9] Section 19(1)(a) of the *Social Security Tribunal Regulations*.
[10] The appeal concerning the Claimant's application for an Old Age Security pension and guaranteed income supplement is under Tribunal file number GP-20-884.
[11] *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC), 1978 1 SCR 369.

[39] The test requires serious grounds on which to base the apprehension.[12] It is insufficient to make a mere allegation. The grounds have to be substantial and compelling.[13]

[40] Allegations of bias generally will not succeed. They will not succeed unless the impugned conduct, taken in context, truly demonstrates a sound basis for perceiving that a particular determination has been made based on prejudice or generalizations.[14]

[41] However, a decision-maker is presumed to act according to their oath of office. This means that one can assume that the decision-maker was not biased. A claimant can rebut or disprove this presumption. A claimant bears the burden of proving that the presumption is not true and that the decision-maker was biased. The evidence of a claimant has to be considered in its context.

[42] The Claimant has outlined five general areas that he claims show bad faith or an apprehension of bias. For the reasons that follow, I find that there was no reasonable apprehension of bias and that the General Division member did not act in bad faith.

(i) General Division's analysis of the status of the Claimant's Social Insurance Number and birthdate

[43] The Claimant argues that the General Division was biased and acted in bad faith when it failed to fully analyze whether there were any outstanding issues over his Social Insurance Number and his birthdate. He claims that, if the General Division had analyzed these issues, it would have found that there was no outstanding information on his claim. With nothing outstanding, he says the Commission would have had no basis to require him to attend another interview.

[44] The General Division did not consider whether the Claimant's Social Insurance Number was dormant, or whether there were any discrepancies in his birthdate. Clearly, the General Division did not see these as issues that it had to address.

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[12] *Taylor Ventures Ltd. V Taylor* [2005] BCCA 350.
[13] *R v RDS* 1997 CanLII 324 (SCC), 1997 3 SCR 484.
[14] *Ibid*.

[45] However, the fact that the General Division did not directly address these issues is not conclusive evidence of bad faith or any bias. The member explained why she rejected the Claimant's arguments that he had supplied the Commission with sufficient information. The member found that it was entirely up to the Commission to decide whether there was sufficient information on a claim.

[46] The member determined that sections 48 to 50 of the *Employment Insurance* Act gave the Commission the power to determine what information it might require. This was a reasonable interpretation. Section 48(2) states:

> No benefit period shall be established unless the claimant supplies information in the form and manner directed by the Commission, giving the claimant's employment circumstances and the circumstances pertaining to any interruption of earnings, and such other information as the Commission may require.

[47] Further, there was evidence that allowed the General Division to conclude that there was at least one other outstanding issue that enabled the Commission to require the Claimant attend another interview.

[48] The General Division found that there were "numerous outstanding issues."[15] The member referred to the Report of Interview[16] and to the Claimant's three letters.[17] These show that, in addition to the Claimant's Social Insurance Number and the birthdate, the Commission also asked for the Claimant's residential address.

[49] I am not satisfied that the evidence shows that the General Division member was biased or that she acted in bad faith.

(ii) Request to merge EI and OAS/GIS appeals

[50] The Claimant argues that the General Division should have heard his Employment Insurance and Old Age Security/Guaranteed Income Supplement appeals together. But, the fact that the General Division member did not merge both appeals does not prove bad faith, any bias

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[15] General Division decision, at para. 20.
[16] Report of Interview, dated July 18, 2014, at GD3-9 to GD3-11.
[17] Claimant's three letters, at GD3-14 to GD3-19.

or apprehension of bias because the General Division member was simply unaware that the Claimant wanted to merge both appeals.

[51] The Claimant does not appear to have ever asked for a merger before the General Division Employment Insurance Section. He did write to the Tribunal on May 16, 2018. However, the Claimant's letter was directed to the General Division-Income Security Section, rather than its Employment Insurance section. [18] In other words, the General Division member hearing his Employment Insurance appeal simply appears to have been unaware of the Claimant's request to merge both appeals. So, the member was not biased in failing to consider the Claimant's request, as she was unaware of it.

[52] I am unable to determine whether the General Division-Income Security Section might have addressed the Claimant's request. If not, the Tribunal should have addressed the Claimant's request to merge both appeals for the purposes of hearings early on in the appeals process. That could have involved alerting the General Division member deciding the Claimant's Employment Insurance appeal. But, this issue has since become moot as the Tribunal has now addressed the Claimant's request.

[53] The Appeal Division issued a decision in November 2020. The Appeal Division determined that, while there may be a common element involved in both appeals relating to the issue of the proof of address, the matters involve different benefits at different points in time, under different statutory regimes.[19] The Appeal Division also determined that the parties are not the same in the two matters.

(iii) Request to merge Tribunal file numbers GE-14-3752 and GE-16-3958

[54] The Claimant also asked to merge appeal GE-16-3958 with GE-14-3752. Tribunal file number GE-14-3752 arises out of the same Employment Insurance claim as GE-16-3958. The difference is that in GE-14-3752, the Commission had not issued a reconsideration decision yet

[18] Claimant's Appendix "A" as amended to the Application to the Appeal Division, dated July 11, 2018, at AD9-37 to AD9-38.
[19] Appeal Division's decision dated November 19, 2020, at AD37.

because it had decided that it had yet to make an initial decision. In GE-16-3958, the Commission issued a reconsideration decision.

[55] However, the General Division member had no authority to merge the two appeals because there was a final decision in GE-14-3752.[20] Since the decision was final in GE-14-3752, there was nothing further for the General Division to adjudicate.

[56] The General Division's decision against merging appeals GE-14-3752 and GE-16-3958 is not suggestive of bad faith, or any bias or an apprehension of bias because the General Division did not have any authority to merge the two appeals.

(iv) Documents in appeal file number GE-14-3752

[57] The Claimant also argues that the General Division member acted in bad faith because she ignored what he considered was relevant evidence in appeal file number GE-14-3752. He claims the member should have considered this evidence. However, the General Division noted that the Claimant relied on the evidence from the earlier appeal file because he claimed that the General Division member in that case found that the Commission was circumventing the rules and that there was an "unlawful pattern."

[58] The member examined the General Division decision in GE-14-3752. The member determined that the General Division member in GE-14-3752 had not made any findings of this nature. It was on this basis that the member declined to consider the file material from the appeal in GE-14-3752. Clearly, the member found that the evidence in file number GE-14-3752 was irrelevant to the issues before her.

[59] Even so, nothing stopped the Claimant from filing any documents or records in his appeal (GE-16-3958). He could have filed documents from the earlier General Division proceedings (GE-14-3752) in his most recent General Division appeal (GE-16-3958).

(v) Actions of the Commission and Service Canada

[20] General Division decision in GE-14-3752, dated April 8, 2016, at GD3-21 to GD3-31.

[60] The Claimant also alleges that Service Canada and the Commission acted in bad faith and were biased against him. This does not represent a valid ground of appeal under section 58(1) of the DESDA. The Claimant's recourse against Service Canada and the Commission lies elsewhere, not with the Social Security Tribunal.

[61] However, allegations of bad faith against the Commission and Service Canada may be relevant where they may have failed to exercise any discretionary powers in a judicial manner. I will address the Claimant's allegations of bias of the Commission in my section below, where I consider whether the General Division exercised its discretion in a judicial manner.

c. Did the Claimant get a chance to respond to the Commission's request to summarily dismiss his appeal?

[62] The Claimant argues that the General Division made its decision without giving him the chance to respond to the Commission's request. The Commission asked the General Division to summarily dismiss the Claimant's appeal.[21]

[63] The evidence shows that the Claimant had the opportunity to file a response to the Commission's request to summarily dismiss his appeal. The Tribunal invited the Claimant to explain why it should not summarily dismiss his appeal. It invited him to file "detailed written submissions explaining why [his] appeal ha[d] a reasonable chance of success."[22]

[64] The Claimant filed submissions on February 15, 2018,[23] along with an appendix. He did not file any other submissions before the General Division issued its decision on June 5, 2018.

[65] I am satisfied that the General Division gave the Claimant a chance to respond to the Commission's request to summarily dismiss the appeal.

d. Did the Claimant get a fair chance to present his case when the General Division proceeded by summary dismissal?

[66] The Claimant argues that the General Division should have issued questions and answers, rather than summarily dismiss his appeal. He claims that, that way, the General Division could

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[21] Claimant's Appendix "A" to the Application to the Appeal Division, filed July 11, 2018, at AD1-14.
[22] Tribunal's letter dated January 18, 2018, with notice of intention to summarily dismiss, at GD28.
[23] Claimant's response of February 14, 2018, to the notice of intention to summarily dismiss, at GD35.

have made an informed decision about the issues before it. From this, I understand that the Claimant is arguing that he did not get a fair chance to present his case.

[67] However, if a General Division member is satisfied that the appeal has no reasonable chance of success, that member does not have any discretion to hold a hearing. Section 53(1) of the DESDA requires the General Division to summarily dismiss an appeal if it is satisfied that the appeal does not have a reasonable chance of success.

[68] Even so, proceeding by summary dismissal does not deprive a claimant of an opportunity to make their case. Before summarily dismissing an appeal, the General Division has to give notice in writing to the claimant. It also has to allow the claimant a reasonable period to make submissions. The General Division cannot make its decision until it has done this.

[69] Here, the General Division sent the Claimant a notice of intention to summarily dismiss. It sent the notice to the Claimant on January 15, 2018. It gave him until February 14, 2018 to provide a response. The Tribunal then extended this deadline, at the Claimant's request. As I noted above, the Claimant filed submissions within the Tribunal's deadline. He also filed an appendix[24] on February 16, 2018.

[70] The Claimant did not outright argue against summarily dismissing his appeal. But, he did write that he wanted to submit reasons and information that would support "at least on a *prima facie* basis, that [his] appeal should be heard."[25] He prepared 13 pages of written facts and arguments. This showed that the Claimant had the full opportunity to give evidence and make submissions.

[71] The General Division considered the Claimant's evidence and arguments. But, as long as the General Division was satisfied that the appeal did not have a reasonable chance of success, section 53(1) of the DESDA still required the General Division to summarily dismiss the appeal, even if the Claimant felt he should have been entitled to a hearing.

[72] Even if the section did not require the General Division to summarily dismiss the appeal, clearly, the General Division determined that questions or answers would not have changed the

[24] Claimant's Appendix dated February 15, 2018, at GD36.
[25]Claimant's response of February 14, 2018, to the notice of intention to summarily dismiss, at GD35-2.

result. The General Division concluded that, "the failure of the Appellant's appeal is pre-ordained no matter what evidence or arguments might be presented at a hearing."[26]

[73] Although there was no oral hearing, I am satisfied that the General Division gave the Claimant a fair chance to present his case.

e. Did the General Division fail to give the Claimant a chance to cross-examine the Commission?

[74] The Claimant argues that the General Division should have given him the chance to cross-examine representatives for the Commission. In his response to the General Division's notice of intention to summarily dismiss, the Claimant asked the Tribunal to hold the hearing in X. That way, employees of the X could give evidence under oath or affirmation.[27] He would also get the chance to cross-examine the employees too.

[75] But, the General Division found that it was futile to hold a hearing and allow for witnesses. As I noted above, the General Division concluded, that, "the failure of the Appellant's appeal is pre-ordained no matter what evidence or arguments might be presented at a hearing."[28]

[76] There is no absolute right to a hearing, particularly when the General Division finds that an appeal is bound to fail anyway. As the General Division concluded that it was pointless to hold a hearing, I am not satisfied that the General Division was required to give the Claimant a chance to cross-examine any witnesses.

f. Did the General Division fail to ensure that evidence was sworn?

[77] The Claimant argues that the General Division should have required sworn evidence from the parties (or, he says that they could have also provided declarations). He argues that the General Division should have rejected any unsworn evidence from the Commission when there was contradictory evidence from him. He states that he is unaware of any statute or regulation that stops the General Division from demanding unsworn evidence, statement, facts, or other from the Commission.

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[26] General Division decision, at para. 24.
[27] Claimant's letter dated January 17, 2018, at GD29-2.
[28] General Division decision, at para. 24.

[78] The General Division does not operate like a court of law. It is an administrative tribunal. It does not adhere to the strict rules of evidence. It can accept evidence, including unsworn statements that a court of law might exclude or deem inadmissible.

[79] If there are objections to that evidence, that could become a matter of weight. The General Division assesses the evidence before it and determines how much weight to assign to it. But typically, it does not exclude evidence on the basis that it is unsworn.

2. Did the General Division fail to consider whether there was a valid basis for the Commission's demand that the Claimant attend an interview?

[80] The Claimant maintains that the Commission did not have a legitimate basis to require him to attend an interview. By this, I understand that he is essentially arguing that the General Division should have exercised its jurisdiction by examining whether the Commission had used its discretion judicially under section 50(6) of the *Employment Insurance Act* when it required him to attend an interview in July 2016.

[81] Section 50(6) of the *Employment Insurance Act* lets the Commission require a claimant to be at a suitable place and time to provide additional information about a claim.

[82] The Claimant does not challenge the Commission's power to require a claimant to attend an interview, but he suggests it must be justified in its use of this power. In other words, the General Division should have examined whether the Commission had exercised its power judicially.

[83] This would have involved examining whether the Commission's request that the Claimant attend an interview had any merit. If the Commission were to require a claimant to attend an interview to provide information about, for instance, his employment, that would be a legitimate exercise of its power. But, if the Commission were to require that claimant to attend without any apparent purpose, that would likely be a sign of bad faith. Such a scenario could represent an instance where the Commission failed to exercise its discretionary powers in a judicial manner.

[84] The Claimant asserts that the Commission already had all the information it required from him. He claims that his Social Insurance Number was not dormant and that his birthdate

was accurate, so there was no basis for an interview. The Claimant suggests that if the General Division had recognized all this, the only conclusion it could have drawn was that he had fulfilled all the requirements under section 50 of the *Employment Insurance Act* and that he was entitled to receive employment insurance benefits.

[85] On its face, it seems that the General Division did not grasp the Claimant's underlying argument that the Commission did not have any foundational basis to require him to attend an interview. The General Division did not analyze whether the Claimant's Social Insurance Number was dormant or if there were any discrepancies in the birthdate.

[86] But, there was evidence before the General Division that showed the Social Insurance Number and birthdate remained live issues in the Commission's eyes.

[87] Notes from the July 2014 interview indicate that the Commission advised the Claimant that he could readily fix the dormant status of his Social Insurance Number and his birthdate. He would need to complete a blank Social Insurance Number Application form.[29] There was no evidence that the Claimant had completed the form, and nothing to suggest that the Commission had accepted the Claimant's assertions that he had otherwise complied with its requirements.

[88] Notes from the July 2014 interview also indicate that the Commission required the Claimant to provide his residential address as part of the verification process. The Claimant had yet to provide this information, citing privacy concerns. The General Division found that the issue over the Claimant's residential address remained outstanding.

[89] The General Division was satisfied that there remained outstanding information after the interview in July 2014. The General Division accepted that it was within the Commission's authority to determine whether there was any outstanding information. And, as long as there was outstanding information, the Commission was also within its rights to require the Claimant attend an interview.

[90] So, it is clear that the General Division considered whether the Commission was properly exercising its discretion in requiring an interview.

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[29] Report of Interview, *supra*.

[91] I am not satisfied that the General Division failed to consider whether there was a valid basis for the Commission's request that the Claimant attend an interview.

3. **Did the General Division fail to consider or apply the doctrine of *res judicata*?**

[92] The Claimant does not actually allege that the General Division failed to consider the issue and apply the doctrine of *res judicata*. Indeed, the Claimant did not raise the issue of *res judicata* before the General Division.[30] Additionally, there was nothing in the hearing file to suggest that *res judicata* was a live issue at the General Division, although he says that the General Division should have realized the issues before it were the same as in another matter before the General Division (tribunal file number GE-14-3752). And, on that basis, he argues that the General Division should not have let the Commission make any new submissions before it.

[93] But, if *res judicata* did not arise, the General Division could not have erred in failing to consider or apply the doctrine. And, there would be no basis for me to intervene in the General Division's decision for any alleged failure to apply the doctrine.

[94] Even so, the Claimant is asking the Appeal Division to apply the doctrine of *res judicata*. If a matter is properly *res judicata*, it prevents the rehearing or re-litigating of matters that have been previously decided with finality.[31] In short, a previous proceeding stops a litigant from being able to litigate the matter a second time.

[95] At its core, the Claimant is essentially asking me for an order prohibiting Service Canada from being able to require him to attend a second interview. The Claimant argues that Service Canada should not have the chance to interview him a second time to collect information. Service Canada asked him to attend an interview in July 2016. He claims that he already attended an interview in 2014 and that he provided information to Service Canada then. The

[30] See Claimant's Notice of Appeal, filed October 25, 2016, at GD2 and GD5.
[31] *Danyluk v Ainsworth Technologies Inc*. 2001 SCC 44 at para. 20.

Claimant argues that the doctrine should apply so that it would preclude the Commission from being able to make a "second trip to the well."[32]

[96] The Claimant argues that the Commission should be bound by any earlier decisions it made regarding the validity of his Social Insurance Number and any other identifying information. He argues the Commission should not be allowed to verify his identity once more, or be able to re-examine his original primary proof of identity documents.

[97] However, I do not have the authority to restrict Service Canada from asking and requiring the Claimant to attend an interview or to provide information. The *Employment Insurance Act* specifically lets the Commission require a claimant to provide additional information. The *Employment Insurance Act* also lets the Commission require a claimant to attend an interview to provide additional information about a claim.[33]

[98] Besides, *res judicata* does not apply in these circumstances. *Res judicata* applies to decisions of the courts, as well as to decisions of administrative tribunals and bodies. It does not apply to decisions made by the Commission or by Service Canada.[34]

4. Did the General Division misinterpret section 50(6) of the *Employment Insurance Act*?

[99] The Claimant argues that the General Division misinterpreted section 50(6) of the *Employment Insurance Act* and *Canada (Attorney General) v Vilaca*.[35]

[100] To begin with, the Claimant notes that, at paragraph 8 of its decision, the General Division did not properly summarize section 50(6) of the *Employment Insurance Act*. There, the General Division member wrote, "Subsection 50(6) of the EI Act specifically authorizes the Commission to require a claimant attend an interview to provide information **in person** (emphasis added)."

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[32] Claimant's Appendix "A" as amended to the Application to the Appeal Division, filed on August 27, 2018, at AD9-24.
[33] Section 50 of the *Employment Insurance Act*.
[34] *Boucher v Stelco Inc.*, [2005] 3 SCR 279 at para. 32.
[35] *Canada (Attorney General) v Vilaca*, 2001 CanLII 22153 (FCA).

[101] The Claimant notes that section 50(6) of the *Employment Insurance Act* actually reads:

> (6) **Making claim or providing information in person** – The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.

[102] The Claimant correctly notes that the General Division member did not fully or accurately set out the section at paragraph 8 of her decision. The member omitted any reference to the fact that the Commission may require a claimant to be at a suitable place and time "to make a claim for benefits in person." As well, the member misconstrued the section. She stated the second reason is to "provide information," when in fact the second reason is to "provide additional information" about a claim.

[103] The Claimant argues that the distinction is significant. He argues that, under the General Division's interpretation of the section, the Commission would enjoy broader powers to compel him to attend an interview in person.

[104] The Claimant argues that the Commission's powers are much more constrained. He argues that section 50(6) of the *Employment Insurance Act* confers authority on the Commission under only two circumstances: (1) if he is making a claim for benefits in person, or (2) if he is providing additional information about a claim. The Claimant argues that neither scenario exists. And, for that reason, he argues that the Commission did not have any authority to require him to attend an interview.

[105] For the first part, the Claimant claims that he had already made a claim for benefits. So, this could not have formed the basis for the Commission's request for him to attend an interview.

[106] As for the second part, the Claimant claims that he provided all the information that the Commission requires. In particular, he says that it had all the information about his Social Insurance Number and his birthdate. So, there was no "additional information" that it could possibly acquire from him.

[107] The Claimant argues that, as there was no outstanding information, the Commission could not possibly have had any authority to require him to attend an interview. He asserts that the General Division made a legal error by expanding the Commission's authority.

[108] But, despite the General Division member's incomplete or inaccurate summary at paragraph 8 of her decision, the member did accurately describe the requirements set out in section 50(6) of the *Employment Insurance Act*. At paragraph 17 of her decision, the member noted that the Commission could require a claimant to be at a place and time to "provide additional information about his claim."[36]

[109] Ultimately, the General Division member determined that it was up to the Commission to decide if there was additional information that it required to assess the Claimant's application. The General Division accepted the Commission's position that it needed additional information.

[110] The Claimant also argues that the General Division misinterpreted *Vilaca*. However, the General Division merely referenced the Commission's argument about the decision. Otherwise, the General Division did not accept or reject the Commission's interpretation of the decision, nor offer its own interpretation.

[111] I am not satisfied that the General Division misinterpreted *Vilaca* or section 50(6) of the *Employment Insurance Act*.

5. Did the General Division misinterpret section 50(9) of the *Employment Insurance Act*?

[112] The Claimant argues that the General Division misinterpreted section 50(9) of the *Employment Insurance Act*. The section requires a claimant to provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.

[113] The General Division set out the relevant facts. The General Division noted that, when the Claimant completed his application for Employment Insurance benefits, he provided only a post office box as his mailing and residential address. The General Division also noted that,

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[36] General Division decision, at para. 17.

during an interview, he advised the Commission that there was no requirement for him to provide a physical address.

[114] However, the General Division did not interpret or address section 50(9) of the *Employment Insurance Act* at all. Indeed, the interpretation of the section was not at issue because it was not part of the Commission's reconsideration decision.[37] In its reconsideration decision, the Commission imposed a disentitlement on the Claimant. It disentitled the Claimant from receiving benefits because he did not prove that he met the requirements under section 50 of the *Employment Insurance Act*. In particular, the Commission wrote that it disentitled him from benefits under sections 50(1), 50(5) and 50(6) of the *Employment Insurance Act*. The Commission said nothing about disentitling him under section 50(9).

[115] Even so, the Commission required the Claimant's residential address. It may continue to be outstanding and it may continue to remain a barrier for the Claimant to fulfil the requirements to be entitled to benefits if he does not attend an interview to provide this information. This is because the Claimant says section 50(9) only requires a mailing address and not a residential address.

[116] Section 50(9) of the *Employment Insurance Act* reads:

> (9) **Mailing address** – A claimant shall provide the mailing address **of their normal place of residence**, unless otherwise permitted by the Commission.
>
> (My emphasis)

[117] While the section refers to the "mailing address," it is qualified by the words "of their normal place of residence."

[118] I note that Umpires have determined that, for the purposes of defining the phrase "mailing address of their normal place of residence," that it is insufficient to supply a post office

[37] A party may bring an appeals to the General Division when they are dissatisfied with a decision of the Commission made under section 112 of the *Employment Insurance Act*. Section 112 deals with reconsideration decisions.

box number.[38] I offer these comments in passing, though am not making a determination, as the issue is not properly before me.

6. Did the General Division base its decision on any important factual errors?

[119] The Claimant argues that the General Division member made several important factual errors. The Claimant argues that the member's findings are inconsistent with the evidence that was before her.

a. Date of the Claimant's application for benefits

[120] The Claimant argues that the General Division member made a factual error in her decision of April 8, 2016, when she wrote that he had applied for employment insurance regular benefits on July 27, 2014. He had in fact applied for benefits on June 27, 2014.

[121] Nothing turns on this error. The General Division did not base its decision on its finding that the Claimant applied for employment insurance benefits in July 2014. But, setting this point aside, the Claimant is referring to the General Division's decision in Tribunal file number GE-14-3752. That is not the General Division decision that is the subject of this appeal.

b. Claimant's Social Insurance Number and birthdate

[122] The Claimant argues that the General Division made a factual error at paragraph 1. The General Division wrote that the Commission could not process his employment insurance claim because his Social Insurance Number was dormant and there were conflicting birthdates.

[123] The Claimant denies that his Social Insurance Number was dormant. He also denies that there were conflicting birthdates. He claims that:

a. The Commission's representations to the Tribunal do not mention his Social Insurance Number or birthdate as issues;[39]

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[38] CUBs 16912, 24644.
[39] Representations in Tribunal file number GE-14-3752, dated November 19, 2014, reproduced at Claimant's Appendix "A" as amended to the Application to the Appeal Division, *supra*.

b. His Social Insurance Number could not have been dormant because Canada Revenue Agency accepted e-filings from him in 2014 and 2015; and[40]
c. The birth year that appears on his employment insurance application matched the one on record with the Social Insurance Registry,[41] i.e. there was no conflict in his birthdate.

[124] The Claimant asserts that the Commission has the information that it requires from him. So, he says that the Commission does not have a valid reason to disentitle him from receiving employment insurance benefits.

[125] The Claimant is making two arguments here: (1) the General Division misstated the evidence about why the Commission would not process his employment insurance claim, and (2) the Commission was wrong anyways to require him to attend an interview because it already had all his information. This second argument does not represent a factual error under section 58(1) of the DESDA. (I have addressed the substance of this second argument above.)

[126] The General Division was simply setting out what it understood of the background history. And, there was some evidence in the hearing file that supported the member's understanding. For instance, the Commission's Report of Interview dated July 18, 2014, shows that the Commission identified a dormant Social Insurance Number and a discrepancy in the Claimant's date of birth as outstanding issues.[42] The General Division noted the Report of Interview, as well as the Claimant's letter.[43] The General Division did not misconstrue or mischaracterize this evidence.

[127] Besides, the General Division was not making any direct findings, one way or the other, about whether the Claimant's Social Insurance Number was dormant, or whether the birthdate that appeared on his application form for employment insurance benefits matched the birthdate that appeared on the Social Insurance Registry.

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[40] Claimant's Appendix "A" as amended to the Application to the Appeal Division, *supra*, Footnote 24.
[41] Claimant's Appendix "A" as amended to the Application to the Appeal Division, *supra*, Footnote 25.
[42] Report of Interview, *supra*.
[43] General Division decision, at para. 20, referencing pages GD3-14 to GD3-19.

[128] The General Division acknowledged the Claimant's claim that he had provided sufficient information to the Commission. However, the General Division found that the assessment of whether there was sufficient information fell to the Commission. And, for this reason, the General Division focused instead on the Commission's request for an interview with the Claimant and the Claimant's non-attendance at that interview.

[129] I am not satisfied that the General Division misstated the background history.

c. Claimant's request for a reconsideration

[130] The Claimant argues that the General Division also misstated the history regarding his request for a reconsideration. The General Division wrote that the Commission refused his request for a reconsideration because it had not issued an initial decision. The Claimant says that, in fact, the Commission ignored his request. He also argues that claimants enjoy a statutory right to reconsideration.

[131] I find that nothing turns on whether the Commission improperly refused or ignored his request. The General Division did not base its decision on this point.

d. Summary

[132] None of these represent factual errors upon which the General Division based its decision.

CONCLUSION

[133] The appeal is dismissed.

[134] The Claimant claims that the issues over his Social Insurance Number and birthdate have since been resolved. The Commission was unable to confirm this particular claim during the course of these proceedings. There may be other information that the Commission requires, such as the Claimant's residential address.

[135] If the Commission determines that there remains outstanding information from the Claimant and that he has yet to fulfill all of the requirements under section 50 of the *Employment*

Insurance Act, the Commission may continue to require the Claimant attend at a suitable time and place to provide additional information. As the General Division previously recommended, the Commission should clearly list and inform the Claimant what outstanding information it requires of him.[44]

Janet Lew
Member, Appeal Division

HEARD ON:	February 2, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. P., Appellant Carol Robillard, Representative for the Respondent (by way of written submissions only)

[44] General Division decision in Tribunal file number GE-14-3752, at GD3-21.