

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal and Appeal Decision

Applicant/Appellant: Canada Employment Insurance Commission

Respondent: C. P.

Decision under appeal: General Division decision dated June 17, 2021 GE-21-888

Tribunal member: Stephen Bergen

Decision date: July 27, 2021

File number: AD-21-232

Decision

[1] I am granting leave (permission) to appeal and I am allowing the appeal. The General Division did not have jurisdiction to cancel the Claimant's benefit period that was established effective January 5, 2020.

Overview

[2] The Appellant established an initial claim for regular benefits on January 5, 2020, after she was separated from her employment. However, she was not entitled to receive benefits until December 6, 2020, after the Commission would have fully allocated her severance payment to weeks of unemployment. When she became eligible, she learned that she was entitled to 36 weeks under her claim. The Claimant asked for more weeks of benefits because other claimants could access up to 50 weeks of COVID recovery benefits at the same time.

[3] The Commission told her that her entitlement to weeks of benefits was related to the claim she established in January 2020. Based on the calculation applicable at the time, she was only entitled to 36 weeks of benefits.

[4] The Claimant appealed to the General Division arguing that she should be eligible for 50 weeks of benefits because other people who claimed benefits in December 2020 were entitled to 50 weeks. The General Division allowed her claim. However, the General Division did not find that she should be entitled to additional weeks of benefits on her initial claim. Instead, it cancelled her initial claim and instructed the Commission to establish a new initial claim effective December 6, 2020.

[5] The Commission sought leave to appeal to the Appeal Division, arguing that the General Division had no jurisdiction to cancel the Claimant's initial claim. According to the Commission, the General Division was only required to determine the number of weeks of benefits to which the Claimant was entitled under the initial claim established January 5, 2020. The Claimant had not specifically asked to have her claim cancelled, and the Commission had not made either a decision or a reconsideration decision on the cancellation of her initial claim.

[6] I am granting leave to appeal and allowing the appeal. At a case conference held July 27, 2020, the parties agreed that the General Division went beyond its jurisdiction to cancel the Claimant's initial claim.

Preliminary Matters

[7] The Commission confirmed in writing that it has made a decision to cancel the benefit period established effective January 5, 2020, and that it would establish a new benefit period to begin December 6, 2020.¹ Because of this, the Claimant conceded that I should allow the Commission's appeal of the General Division decision.

[8] Because the Claimant and the Commission have agreed on the ultimate disposition of this appeal, I am combining into one the leave to appeal decision and the appeal on the merits decision.

What Grounds can I Consider for this appeal?

[9] "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:

- a) The General Division hearing process was not fair in some way.
- b) 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.
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.

Issues

[10] Did the General Division have jurisdiction to cancel the Claimant's initial claim for benefits and direct the Commission to establish a new claim?

¹ AD4-1.

Analysis

[11] The General Division only has the authority that it is given by the *Employment Insurance Act* (EI Act). The EI Act grants the authority to consider appeals of reconsideration decision from the Commission.² This means that it may only consider those issues that are expressed or implied in the Commission's reconsideration decision.

Did the General Division act outside of its jurisdiction?

[12] The Claimant appealed the reconsideration decision of May 11, 2021. The only issue in the decision was the number of weeks of benefits to which the Claimant was entitled. The reconsideration decision maintained the original decision of April 23, 2021.

[13] The decision established a claim January 5, 2020, stated its intention to allocate the Claimant's separation payments from January 5 to December 5, 2020, and invited the Claimant to renew her claim after the end of this allocation. The decision did not specify the weeks of benefits to which the Claimant was entitled.

[14] I accept that the Claimant's intention in seeking a reconsideration was to have her weeks of entitlement increased. She stated that she wanted to receive 50 weeks of benefits and not the 36 weeks obtained from the chart.³ She also suggested that the Commission start her claim later, if that was necessary to access the 50 weeks.⁴

[15] I also accept that "weeks of entitlement" was implicit in the original April 23 decision. The decision did not specify the Claimant's entitlement to a particular number of weeks. However, nothing in the record suggests that the Claimant disputed her hours of insurable employment, or her economic region. The entitlement to weeks of benefits is simply read off a chart. The only two variables on the chart are the unemployment

² The Commission's authority to reconsider is described in section 112 of the *Employment Insurance Act* (EI Act). The General Division's authority to consider an appeal of a reconsideration decision is set out in section 113 of the EI Act.

³ See the Claimant's request for reconsideration (GD3-20) and her discussion with the Commission (GD3-21).

⁴ GD21.

rate (from the claimant's economic region at the relevant time) and the hours of insurable hours of employment accumulated by the claimant.⁵ The "weeks of entitlement" is a necessary product of the unemployment rate and the number of hours of insurable employment.

[16] Finally, I accept that the subject of the Commission's decision of May 11, 2021, was the reconsideration of the Claimant's weeks of entitlement. The reconsideration decision states on its face that the issue is "Weeks of Entitlement."⁶

[17] The Commission's decision, and its reconsideration decision, concerned the claim that the Claimant had established January 5, 2020. There is nothing in the original decision or the reconsideration decision to suggest that the Commission was considering or rejecting a request to cancel the original benefit period. The reconsideration decision did not discuss the Claimant's ability to make some different claim under a different program with different criteria and entitlements.

[18] Finally, the Commission and the Claimant have agreed that the General Division made an error of jurisdiction. That agreement is consistent with the law, and appears to be in everyone's best interest.

[19] I find that the General Division made an error of jurisdiction. It had no jurisdiction to cancel her initial claim of January 5, 2020, or to direct the establishment of some other claim.

Summary

[20] Because I have found that the General Division made an error in how it reached its decision, I must consider what I should do about the error (remedy).

⁵ See section 12(2) and Schedule I of the EI Act.

⁶ GD3-23.

Remedy

[21] I have the authority to change the General Division decision or to make the decision that the General Division should have made. I could also send the matter back to the General Division for it to reconsider its decision.⁷

[22] In light of the party's agreement, the most appropriate remedy is simply to rescind the General Division decision.

[23] The Commission will be cancelling the benefit period with which the appeal was concerned. Therefore, there is no purpose in requiring the General Division reconsider its decision and determine the Claimant's weeks of entitlement under her initial claim. For the same reason, any decision that I might make about the initial claim would be moot (or pointless).

Conclusion

[24] I am allowing the Commission's appeal. The General Division exceeded its jurisdiction. The General Division decision is rescinded.

Stephen Bergen
Member, Appeal Division

⁷ See the Appeal Division authority under section 59(1) and section 64 of the DESD Act.