



Citation: *EO v Canada Employment Insurance Commission*, 2021 SST 447

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: E. O.
Representative: G. O.

Respondent: Canada Employment Insurance Commission
Representative: Susan Prud'Homme

Decision under appeal: General Division decision dated March 15, 2021
(GE-20-2204)

Tribunal member: Pierre Lafontaine

Type of hearing: On the Record
Decision date: August 25, 2021
File number: AD-21-109

Decision

[1] The appeal is allowed in part. The file returns to the General Division only in order to reconsider whether the medical and dental benefit payment constitutes earnings and if so, how it must be allocated.

Overview

[2] The Appellant (Claimant) stopped working for his employer in 2013. Several years later, he got a settlement payment of \$148,000 from his former employer following a wrongful dismissal claim. The Respondent (Commission) decided that the sum of \$73,210 was “earnings” under the law. The Commission allocated the earnings starting from the week the Claimant stopped working because it determined that the employer had paid the money because of the separation from employment.

[3] The General Division concluded that most of the money the Claimant received from his employer was earnings that had to be allocated from the separation of employment, including the medical and dental benefit payment. However, it concluded that the legal fees payment was not earnings. The General Division also concluded that it did not have the authority to order any remedy based on the Claimant’s dissatisfaction with the Commission’s management of his file.

[4] The Appeal Division granted the Claimant leave to appeal. He submits that the General Division failed to observe a principle of natural justice, erred in law, and 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.

[5] I am allowing the Claimant’s appeal in part. The file returns to the General Division only in order to reconsider whether the medical and dental benefit payment constitutes earnings and if so, how it should be allocated.

Preliminary matters

[6] At the Claimant's request, I proceeded to cancel the hearing to take place on August 17, 2021, and I am rendering the present decision based on the written submissions of the parties.

Issues

[7] Issue 1: Did the General Division inappropriately exercise its discretionary power when it decided not to hold a settlement conference?

[8] Issue 2: Did the General Division make an error when it concluded that it did not have jurisdiction to write-off the Claimant's overpayment?

[9] Issue 3: Did the General Division make an error in not awarding the Claimant a remedy based on the Commission's management of his file?

[10] Issue 4: Did the General Division make an error when it concluded that it did not have the authority to determine whether the Claimant was entitled to any more EI benefits?

[11] Issue 5: Did the General Division fail to observe a principle of natural justice because it did not communicate to the Claimant a copy of the Commission's final submissions received past the deadline, even though the General Division did not accept them?

Analysis

Appeal Division's mandate

[12] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 58(1) of the *Department of*

Employment and Social Development Act, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[13] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.²

[14] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, I must dismiss the appeal.

Issue 1: Did the General Division inappropriately exercise its discretionary power when it decided not to hold a settlement conference?

[15] This ground of appeal is without merit.

[16] The Claimant argues that the General Division inappropriately exercised its discretionary power when it decided not to hold a settlement conference. He puts forward that the General Division could not wildly refuse to invite the Commission to a settlement conference and could not speculate on its result.

[17] Considering the Claimant's allegations and demands, and the firm position of the Commission, the General Division found that a settlement between the parties was highly improbable and that it was better to proceed on the merits.

[18] Under these circumstances, a settlement conference was doomed to fail. I do not find that the General Division inappropriately exercised its discretionary power when it decided not hold a settlement conference.

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

² *Idem*.

Issue 2: Did the General Division make an error when it concluded that it did not have jurisdiction to write-off the Claimant's overpayment?

[19] This ground of appeal is without merit.

[20] The General Division determined that only the Commission has the discretion to write-off an overpayment.

[21] It is well established that only the Federal Court, following a decision by the Commission, has the jurisdiction to hear an appeal on the issue of a write-off.³ A claimant cannot request a reconsideration of a decision by the Commission on a write-off matter and, as a result, cannot appeal such a decision before the General Division.⁴

[22] If the Claimant wants to request a write-off of his debt, a formal request must be made directly to the Commission so that a decision be rendered on that issue. If the decision is not to the Claimant's satisfaction, he can then appeal to the Federal Court.

Issue 3: Did the General Division make an error in not awarding the Claimant a remedy based on the Commission's management of his file?

[23] This ground of appeal is without merit.

[24] The General Division determined that it did not have the authority to grant the Claimant the remedies sought.

[25] I note that most of the Claimant's representations concern his dissatisfaction with the client service he received from the Commission.

³ *SJ v Canada Employment Insurance Commission*, 2021 SST 89; *C. B. v Canada Employment Insurance Commission*, 2020 SST 226; *B. P. v Canada Employment Insurance Commission*, 2019 SST 124; *M. F. v Canada Employment Insurance Commission*, 2019 SST 622; *M. L. v Canada Employment Insurance Commission*, 2016 CanLII 78669 (SST).

⁴ Section 112.1 of the *Employment Insurance Act* (EI Act).

[26] The Claimant vigorously puts forward that he suffered a great deal from the poor service he received, including serious economic hardship and mental distress. He puts forward that he could not get his settlement funds released for more than a year due to the Commission's undue delay, dishonesty and incompetence.

[27] Unfortunately, for the Claimant, the General Division did not make an error when it determined that the Tribunal does not have jurisdiction to order compensation or relief for any damages suffered by him. It is well established that this kind of issue must be debated in another forum.⁵

Issue 4: Did the General Division make an error when it concluded that it did not have the authority to determine whether the Claimant was entitled to any more EI benefits?

[28] This ground of appeal is without merit.

[29] The General Division correctly determined that without a reconsideration decision, it could not make a decision about whether the Claimant should receive more EI benefits. A claimant can only appeal to the General Division following a reconsideration decision made by the Commission.⁶

[30] I take notice that the Commission undertakes to review whether the Claimant is able to claim more benefits after a final decision regarding the allocation of his settlement money.

Issue 5: Did the General Division fail to observe a principle of natural justice because it did not communicate to the Claimant a copy of the Commission's final submissions received past the deadline, even though the General Division did not accept them?

⁵ *DB v Canada Employment Insurance Commission*, 2021 SST 84; *D. G. v Canada Employment Insurance Commission*, 2019 SST 1327; *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; *Attorney General of Canada v Tjong*, A-672-95.

⁶ Section 113 of the EI Act.

[31] In order to answer this question, I must clarify the issues presented to the General Division regarding the allocation of earnings.

[32] Before the General Division, both parties agreed that the following sums of money received by the Claimant are not earnings:

- \$67,000 for general damages for emotional distress;
- \$1,267 for costs of disbursements.

[33] The parties also agreed that the following sums of money are earnings:

- Vacation pay: \$41.54
- Pay in lieu of notice: \$3,461.54
- Three months' pay in lieu of notice: \$45,000
- Compensation for vacation and flex days for three months: \$5,200

[34] Therefore, the only issues presented to the General Division regarding the allocation of earnings were about the medical and dental benefit payment, and the legal fees payment.

[35] The General Division found that the settlement agreement payment included \$23,283 for legal fees. It concluded that this sum covered all legal expenses, and so the money earmarked for the Claimant's legal fees could not be earnings.

[36] The General Division then had to decide whether the medical and dental benefit payment constitutes earnings under the law.

[37] I note that the General Division heard the appeal by way of Questions and Answers. It asked the Claimant, at question 7, to explain why he thought the taxability of a sum of money should affect whether it is earnings for the purposes of employment insurance benefits.

[38] The Claimant provided a detailed answer why he considers the medical and dental benefit payment not to be earnings.⁷

[39] After the Claimant responded to the General Division's questions, and past the deadline for the Claimant to respond, the Commission sent the General Division unsolicited submissions.⁸ The General Division decided not to accept them.

[40] However, I note that the General Division read and evaluated the Commission's submissions because it found that the submissions could have been made before the hearing, based on the information that was already in the Claimant's notice of appeal. It also determined that the new information would not change the General Division decision.

[41] I find that from the moment the General Division read and evaluated the Commission's unsolicited submissions, it had an obligation to give the Claimant an opportunity to respond. This is all the more true as the unsolicited submissions respond to the Claimant's submissions regarding question 7 of the questionnaire. I also find that part of the unsolicited submissions are reflected in the General Division decision.⁹

[42] The concept of "natural justice" includes the right of a claimant to a fair hearing. A fair hearing presupposes adequate notice of the hearing, the opportunity to be heard, the right to know what is alleged against a party and the opportunity to answer those allegations.

[43] So fundamentally important is this right, that there must not exist even the appearance of prejudice to the right of any claimant to make a full presentation before the General Division. The law requires that not only must justice be done, it must manifestly and undoubtedly be seen to be done. The mere suspicion that

⁷ See GD3-16, Question 7.

⁸ The General Division refers to GD-3-17.

⁹ See General Division decision, par. 39: "The EI Regulations do not direct me to the Income Tax Act except in one specific circumstance."

a claimant has been denied this right is justification in itself for an order returning the matter to the General Division.

[44] I am of the view that the General Division failed to observe a principle of natural justice because it did not communicate to the Claimant a copy of the Commission's final submissions and give him an opportunity to reply before rendering its decision.

Remedy

[45] Considering that the Claimant did not have an opportunity to reply to the Commission's final submissions, I have no choice but to refer the matter back to the General Division only in order to reconsider whether the medical and dental benefit payment constitutes earnings and, if so, how it must be allocated.

Conclusion

[46] The appeal is allowed in part. The file is returned to the General Division only in order to reconsider whether the medical and dental benefit payment constitutes earnings and if so, how it must be allocated.

[47] I take notice of the Commission's undertaking to review whether the Claimant is able to claim more benefits after a final decision regarding the allocation of his settlement money.

Pierre Lafontaine
Member, Appeal Division