



[TRANSLATION]

Citation: *AN v Canada Employment Insurance Commission*, 2021 SST 524

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. N.

Respondent: Canada Employment Insurance Commission
Representative: Mélanie Allen

Decision under appeal: General Division decision dated
April 13, 2021 (GE-21-428)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference

Hearing date: September 21, 2021

Hearing participants: Appellant
Respondent's representative

Decision date: September 28, 2021

File number: AD-21-220

Decision

[1] The appeal is dismissed.

Overview

[2] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Appellant (Claimant) had received earnings from her employer while receiving Employment Insurance (EI) benefits. So, it allocated these amounts. The Commission also imposed a non-monetary penalty on the Claimant for failing to declare these earnings. The Commission upheld its decision on reconsideration. The Claimant appealed the reconsideration decision to the General Division.

[3] Before the General Division, the Claimant did not dispute the issue of allocation of earnings. However, she objected to the penalty. According to her, she has been the victim of fraud by her ex-partner, and she did not know that he had claimed EI benefits in her name.

[4] The General Division dismissed the Claimant's appeal on the issue of allocation of earnings. However, it allowed the Claimant's appeal on the issue of penalty. The General Division found that the Claimant had not knowingly made false or misleading statements.

[5] The Claimant was granted leave to appeal the General Division decision. She argues that the General Division made an error when it refused to exercise its jurisdiction by making no findings on the application of section 52 of the *Employment Insurance Act* (EI Act).

[6] I have to decide whether the General Division refused to exercise its jurisdiction.

[7] I am dismissing the Claimant's appeal.

Issue

[8] Did the General Division refuse to exercise its jurisdiction by making no findings on the application of section 52 of the EI Act?

ANALYSIS

Appeal Division's mandate

[9] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

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

[11] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or 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.

Did the General Division refuse to exercise its jurisdiction by making no findings on the application of section 52 of the EI Act?

[12] The Claimant submits that the General Division refused to exercise its jurisdiction because it failed to decide an issue that it should have decided.

[13] More specifically, the Claimant says that, after finding that she had not made false or misleading statements, the General Division made no findings on the application of section 52 of the EI Act.

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

[14] The Claimant argues that, since she did not make false statements, the time to reconsider the claim for benefits should be limited to 36 months. So, the General Division should have written off the overpayment, which it did not do.

[15] I note that the notice of decision given to the Claimant indicates that the Commission reconsidered her claim for EI benefits within 72 months because false or misleading statements had been made.

[16] It is true that the Claimant does not seem to have raised the issue of the reconsideration period before the General Division. However, after finding that the Claimant had not knowingly made false or misleading statements, the General Division was required to decide the matter of the reconsideration period, which was closely related to the issues before it.

[17] This means that I should intervene.

Remedy

[18] In my view, the Claimant's appeal raises an issue of interpretation of section 52(5) of the EI Act. So, I will give the decision that the General Division should have given.²

[19] It is well established that, to be granted the extended time to reconsider set out in section 52(5) of the EI Act, the Commission does not have to establish that the claimant in question made false or misleading statements but must instead simply show that it could reasonably find that a false or misleading statement had been made **in connection with a claim**.³

[20] I note that, unlike section 38 of the EI Act, which provides for penalties, section 52(5) of the EI Act does not state by whom the false or misleading statement or representation must be made. For example, an employer may have

² In accordance with my powers under section 59(1) of the *Department of Employment and Social Development Act*.

³ *Canada v Langelier*, 2002 FCA 157; *Canada v Lemay*, 2002 FCA 337; *Canada v Dussault*, 2003 FCA 372.

made it when it issued a Record of Employment, or, as in the facts in this case, it may have been made by an ex-partner.⁴

[21] In my view, to have 72 months, the Commission was not required to prove the Claimant's complicity or that she had personally made a false statement. The Commission only needed to be satisfied that a false or misleading statement or representation had been made in connection with the Claimant's claim for benefits.

[22] The evidence on file shows that the Claimant's ex-partner made false or misleading statements before the Commission made its decision.⁵ So, the Commission could reasonably find that a false or misleading statement or representation had been made to have 72 months to reconsider the Claimant's claim for benefits.

[23] I have no choice but to dismiss the Claimant's appeal.

Conclusion

[24] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division

⁴ CUB 18833.

⁵ See GD3-17 to GD3-41, GD3-48, GD3-49, and GD3-60.