



[TRANSLATION]

Citation: *ER v Canada Employment Insurance Commission*, 2021 SST 569

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: E. R.

Respondent: Canada Employment Insurance Commission
Representative: Melanie Allen

Decision under appeal: General Division decision dated
July 29, 2021 (GE-21-1113)

Tribunal member: Pierre Lafontaine

Type of hearing: On the record
Decision date: October 8, 2021
File number: AD-21-284

Decision

[1] The appeal is allowed.

Overview

[2] The Appellant (Claimant) established a claim for Employment Insurance (EI) regular benefits effective March 26, 2017. On August 1, 2017, he decided to start a business selling and servicing bakery equipment. In September 2018, the Respondent (Commission) was informed that the Claimant had obtained a business number. It investigated whether the Claimant was still available for work.

[3] On March 22, 2021, the Commission found that the Claimant was running a business and working full work weeks. Since he was not unemployed, he was not entitled to receive EI benefits. The Commission assessed an overpayment. The Claimant requested a reconsideration of the decision, but the decision was upheld. The Claimant appealed to the General Division.

[4] The General Division found that the Commission could reconsider the Claimant's claim. It found that the Claimant was working full work weeks, so he was not unemployed.

[5] The Claimant was granted leave to appeal the General Division decision to the Appeal Division. He argues that the General Division failed to exercise its jurisdiction by making no findings on the fact that the Commission authorized the payment of benefits when it knew from the beginning that he was starting a business.

[6] I have to decide whether the General Division refused to exercise its jurisdiction by making no findings on the Commission's reconsideration period.

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

Issue

[8] Did the General Division refuse to exercise its jurisdiction by making no findings on the Commission's reconsideration period?

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.

Preliminary remarks

[12] Because of the Commission's submissions, I decided that a hearing was no longer necessary to decide this appeal.

Did the General Division refuse to exercise its jurisdiction by making no findings on the Commission's reconsideration period?

[13] The Claimant is appealing the General Division decision. He argues that the General Division failed to exercise its jurisdiction by making no findings on the fact that the Commission authorized the payment of benefits when it knew from the beginning that he was starting a business.

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

[14] The Claimant argues that he always told the Commission the truth. He says that the Commission knew from the time his benefits started that he was starting his business. A Commission agent even encouraged him in his efforts. He says that the Commission should have stopped paying him benefits at the outset instead of asking him for full repayment now.

[15] The Commission has sole authority to retroactively reconsider a claim for benefits based on whether the claimant was legally entitled to those benefits. The law allows the Commission discretion in deciding whether to reconsider.²

[16] In the Commission's view, the General Division did not properly exercise its jurisdiction because it had to decide whether the Commission had judicially exercised its discretion to reconsider, which it did not do.

[17] I agree that the General Division failed to exercise its jurisdiction, since it did not decide whether the Commission had judicially exercised its discretion to reconsider. This was a matter closely related to the issue before it.

[18] This means that I should intervene.

Remedy

[19] The Commission concedes the appeal before the Appeal Division and respectfully asks that the Appeal Division allow the Claimant's appeal.

[20] Since the Commission concedes the appeal, and since the Claimant had the opportunity to present his case before the General Division, I will give the decision that the General Division should have given.³

² See section 52 of the *Employment Insurance Act*.

³ In accordance with the powers set out in section 59(1) of the *Department of Employment and Social Development Act*.

[21] The time to reconsider can be extended from 36 to 72 months if, in the Commission's opinion, a false or misleading statement has been made in connection with a claim.

[22] When the Commission exercises this power given to it by the law, it has a duty to tell the claimant precisely why the statement seems false.⁴

[23] In this case, the Commission concedes that there is no such evidence and that it has not fulfilled its duty of showing that it exercised its discretion judicially when it extended the time to reconsider the claim for benefits beyond the 36 months.

[24] In light of the above, and after reviewing the file, I am of the view that the Commission failed to exercise its discretion judicially when it reconsidered the Claimant's claim for benefits after 36 months.

[25] This means that the Claimant's appeal should be allowed.

Conclusion

[26] The appeal is allowed.

Pierre Lafontaine
Member, Appeal Division

⁴ *Canada v Langelier*, 2002 FCA 157; *Canada v Dussault*, 2003 FCA 372.