



Citation: *Canada Employment Insurance Commission v SB*, 2021 SST 659

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Anick Dumoulin
Respondent: S. B.
Representative: Jesse Valkenier

Decision under appeal: General Division decision dated June 22, 2021
(GE-21-730)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference
Hearing date: October 19, 2021
Hearing participants: Appellant's representative
Respondent
Respondent's representative

Decision date: November 9, 2021
File number: AD-21-248

Decision

[1] The appeal is allowed. The file returns to the General Division to determine whether the Commission exercised its discretion judicially under section 46.01 of the *Employment Insurance Act* (EI Act).

Overview

[2] The Respondent (Claimant) settled a claim for wrongful dismissal against his employer for \$5000.00. The Appellant, the Canada Employment Insurance Commission (Commission), decided that the payment is earnings and allocated it to the Claimant's claim, resulting in an overpayment.

[3] Upon reconsideration, the Commission changed its allocation because it had started the allocation from the incorrect start date and had used the incorrect average weekly earnings to allocate the earnings. This changed the amount of the overpayment. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found the payment to be earnings and agreed with the Commission's allocation. However, it found that the Commission did not reconsider the claim within the allowed time to do so. Consequently, the General Division found that the Commission's decision was invalid.

[5] The Appeal Division granted the Claimant leave to appeal. The Commission submits that the General Division erred in law when it found that the Commission did not reconsider the claim within the allowed time to do so.

[6] I must decide whether the General Division made an error in law when it concluded that the Commission did not reconsider the claim within the allowed time to do so.

[7] I am allowing the Commission's appeal. The file return to the General Division to determine whether the Commission exercised its discretion judicially under section 46.01 of the EI Act.

Issue

[8] Did the General Division make an error in law when it concluded that the Commission did not reconsider the claim within the allowed time to do so?

Analysis

Appeal Division's mandate

[9] 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

[10] 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

[11] 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.

Did the General Division make an error in law when it concluded that the Commission did not reconsider the claim within the allowed time to do so?

[12] The facts in the file are simple and uncontested.

[13] The Claimant lost his employment on November 24, 2017, and collected Employment Insurance benefits until June 23, 2018. He started legal action for wrongful dismissal against his employer and settled the claim for \$8000.00 less \$3000.00 in legal fees on May 25, 2018. On February 3, 2021, the Commission

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

² *Idem*.

notified the Claimant of the allocation of earnings, which created an overpayment of \$2,564.00. Upon reconsideration, the Commission maintained in its initial decision with modifications.

[14] The General Division found that the Commission did not show it had a reasonable basis for concluding that the Claimant made a false statement or misleading statement or representation in connection with his claim. Therefore, it could not extend the reconsideration period past 36 months. Consequently, the General Division concluded that the Commission did not reconsider the Claimant's claim within the allowed time to do so.

[15] The Commission submits that the General Division erred in law in applying section 52(1) of the EI Act in making its decision. It argues that the General Division should have applied sections 45 and 46 of the EI Act. The Commission submits there is no time limit to address moneys that become payable arising from damages for wrongful dismissal.

[16] The Claimant does not dispute the General Division's allocation of the earnings, but strongly objects to the fact that the Commission can go back more than 36 months to claim an overpayment from him even though he made no false representations.

[17] Did the General Division make an error in law when it applied the 36-month limitation period set out in section 52 of the EI Act given that the Claimant did not make a false representation?

[18] I believe so. I am of the opinion that section 52 of the EI Act does not apply to the recovery of debts under sections 45 and 46 of the EI Act.

[19] Section 45 of the EI Act indicates that If a claimant receives benefits for a period, and an employer subsequently becomes liable to pay them earnings, including damages for wrongful dismissal, for the same period and pays the earnings, the claimant shall pay to the Receiver General as repayment of an overpayment of benefits an amount equal to the benefits that would not have

been paid if the earnings had been paid or payable at the time the benefits were paid.

[20] I note that there is no mention of good or bad faith in section 46, which must be read together with section 45, which refers to a claimant's obligation to repay overpayments of benefits upon receiving deferred earnings.³

[21] The Commission was informed that a settlement agreement had been reached between the Claimant and his employer and that he had received an amount of money following a claim for wrongful dismissal. This is specifically one of the reasons listed in sections 45 and 46 of the EI Act for correcting the calculation of benefits to be paid.

[22] In these circumstances, subject to section 46.01, the EI Act provides for a limitation period of 72 months after the day on which the liability arises to recover overpayments, even if the claimant acted in good faith.⁴

[23] I find that the General Division made an error in law in concluding that that the 36-month limitation period set out in section 52 of the EI Act applied and that the Commission did not reconsider the claim within the allowed time to do so.

[24] I am therefore justified to intervene.

Remedy

[25] Considering that the General Division wrongfully applied section 52 of the EI Act, it did not address the application of section 46.01 of the EI Act.⁵

³ *Chartier v Canada (Attorney general)*, 2010 FCA 150.

⁴ Sections 47(1) and 47(3) of the EI Act.

⁵ Section 46.01 of the EI Act indicates that no amount is payable under section 45, or deductible under subsection 46(1), as a repayment of an overpayment of benefits if more than 36 months have elapsed since the lay-off or separation from the employment in relation to which the earnings are paid or payable and, in the opinion of the Commission, the administrative costs of determining the repayment would likely equal or exceed the amount of the repayment.

[26] I therefore have no choice but to return the file to the General Division in order to determine whether the Commission exercised its discretion judicially under section 46.01 of the EI Act.

Conclusion

[27] The appeal is allowed.

[28] The file returns to the General Division to determine whether the Commission exercised its discretion judicially under section 46.01 of the EI Act.

Pierre Lafontaine
Member, Appeal Division