



Citation: *MG v Canada Employment Insurance Commission*, 2021 SST 661

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. G.

Respondent: Canada Employment Insurance Commission
Representative: Jordan Fine

Decision under appeal: General Division decision dated August 9, 2021
(GE-21-1072)

Tribunal member: Janet Lew

Type of hearing: On the record

Decision date: November 8, 2021

File number: AD-21-293

Decision

[1] The appeal is allowed. The General Division exceeded its jurisdiction by deciding whether the Claimant's employment outside Canada was insurable and by deciding how many hours he had in insurable employment. I am setting aside the General Division decision. I am also returning this matter to the General Division for a reconsideration, with directions.

Overview

[2] This is an appeal by the Appellant, M. G. (Claimant) of the General Division decision.

[3] The General Division determined that the *Agreement on Social Security between Canada-Ireland*¹ (Agreement) does not apply in employment insurance cases. As a result, the Claimant did not meet the requirements under the *Employment Insurance Regulations*² that would have enabled him to include his employment outside Canada as insurable employment. In other words, it determined that he could not rely on any hours that he had worked in Ireland. He otherwise did not have any insurable hours to qualify for Employment Insurance benefits in Canada.

[4] The Claimant argues that the General Division made several legal and factual errors. He argues that the General Division failed to recognize that the Agreement applies. He argues that he should have been able to rely on his hours of employment from Ireland. He also argues that the General Division failed to make sure that the process was fair because it went ahead and made a decision, before getting a ruling from the Canada Revenue Agency (CRA).

[5] The Respondent, Canada Employment and Insurance Commission (Commission), argues that the General Division decision was premature. The Commission argues that only the CRA is authorized by the Minister of National Revenue to determine a claimant's hours of insurable employment. In other words, the Commission argues that the General Division exceeded its jurisdiction. The

¹ *Agreement on Social Security between Canada and Ireland*, E102203-CTS 1992 No. 6.

² See *Employment Insurance Regulations*, s. 5.

Commission agrees that the appeal should be allowed and the matter returned to the General Division.

[6] In the course of these proceedings, the Commission obtained a ruling from CRA confirming that the Claimant's employment outside Canada does not meet the conditions of section 5 of the *Employment Insurance Regulations*. In other words, he could not rely on any hours that he had worked in Ireland. The Claimant is appealing this ruling. He argues that the Appeal Division should await the results of his appeal before rendering a decision, as "new arguments may be brought to the debate."³

Issue

[7] The Claimant raises several issues, but there is only one issue that needs to be addressed to dispose of this matter: Did the General Division exceed its jurisdiction?

Analysis

[8] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.⁴

Brief background

[9] The Claimant worked as a lecturer and assistant professor of law and business at the National University of Ireland-Dublin, from November 2019 to August 2020. Upon returning to Canada, he applied for Employment Insurance benefits. The Claimant relies on the hours from his employment in Ireland to qualify for Employment Insurance benefits. He does not have any other insurable hours.

Did the General Division exceed its jurisdiction?

[10] The General Division examined whether the Claimant's employment outside Canada was insurable. It considered whether he met the requirements under section 5

³ See Claimant's submissions, dated November 5, 2021, at AD9-2.

⁴ See section 58(1) of the *Department of Employment and Social Development Act*.

of the *Employment Insurance Regulations*. That section deals with whether a claimant's employment outside Canada is included in insurable employment.

[11] The Claimant argues that the "Commission chose to snag the jurisdiction of the General Division by not abiding by the interim decision dated 8 July 2021 which imposed on the Commission to request a Canada Revenue Agency's ruling on the insurability of [his] employment hours in the Republic of Ireland."⁵

[12] The Commission agrees that the General Division exceeded its jurisdiction when it considered whether the Appellant's employment outside Canada constituted hours of insurable employment under section 5 of the *Employment Insurance Regulations*. The Commission argues that only a CRA officer authorized by the Minister of National Revenue can determine the Appellant's hours of insurable employment, under section 90(1) of the *Employment Insurance Act*.

[13] Section 90(1) of the *Employment Insurance Act* states that an employee or the Commission, among others, may request an officer of the CRA authorized by the Minister to make a ruling on several questions, including whether an employment is insurable.

[14] The section is clear. The General Division decided an issue that it should not have decided. The General Division should not have determined whether the Claimant's employment outside Canada constituted hours of employable insurance. The power to decide this resides exclusively with the Minister of National Revenue.⁶

[15] Given the nature of the General Division's error, it is unnecessary to address the balance of the Claimant's arguments.

⁵ See Claimant's Application to the Appeal Division--Employment Insurance, at AD1-3. The "decision" that the Claimant is referring to is actually request that the Tribunal made of the Commission on July 8, 2021 at GD8-1. The Tribunal asked the Commission to seek a ruling from the Canada Revenue Agency on the Claimant's hours of insurable employment both within and outside Canada

⁶ See *Canada (Attorney General) v Haberman*, 2002 A-717-98 FCA), paras. 13 to 19.

Remedy

[16] How can I fix the General Division's error? I have two basic choices.⁷ I can substitute my own decision or I can refer the matter back to the General Division for reconsideration, with directions. If I make my own decision, this means I may make findings of fact.⁸

[17] The CRA issued a ruling on October 21, 2021,⁹ confirming that the Claimant's employment outside Canada does not meet the conditions of section 5 of the *Employment Insurance Regulations*. In other words, the Claimant is unable to rely on the hours of his employment outside Canada.

[18] The Commission argues that, as the Appeal Division does not consider new evidence, it should not consider the CRA's recent ruling. The Commission argues that it would be appropriate for the Appeal Division to refer the matter back to the General Division for a reconsideration.

[19] The Claimant confirms that he is aware of the CRA's recent ruling. He is appealing the CRA's ruling to the Chief of Appeals CPP/EI Appeal Division, Canada Revenue Agency.¹⁰ (Decisions of the CPP/EI Appeals Program are final and binding and may only be overturned by the Tax Court of Canada.)

[20] In his letter of October 29, 2021, the Claimant requests that the Appeal Division "exercise its jurisdictional competence and fix this matter itself."

[21] In his more recent correspondence, the Claimant argues instead that the Appeal Division should hold off on making any decision in this matter, "seeing that there is a

⁷ See section 59 of the *Department of Employment and Social Development Act*.

⁸ See *Weatherley v Canada (Attorney General)*, 2021 FCA 58, at paras. 49 and 51, and *Nelson v Canada (Attorney General)*, 2019 FCA 222 at para. 17.

⁹ See Canada Revenue Agency ruling dated October 21, 2021, at AD4-8 to AD4-9.

¹⁰ See Claimant's letter dated October 29, 2021, at AD5-7. The appeal of the ruling is made under section 91 of the *Employment Insurance Act*.

chance that new arguments may be brought to the debate,”¹¹ arising out of his appeal of the CRA ruling.

[22] The Claimant initially asked the Appeal Division to exercise its jurisdiction and “fix this matter.” But, as I have noted above, only the Minister of National Revenue has the jurisdiction to decide whether the Claimant’s employment is insurable. The parties have now received CRA’s ruling and it is currently under appeal.

[23] The outcome of the Claimant’s appeal to the CPP/EI Appeal Division on the CRA’s ruling will have no bearing on this matter. A decision by the CPP/EI Appeal Division cannot somehow remedy the General Division’s jurisdictional error. My decision on this appeal will be the same, no matter what the Minister of National Revenue decides. I see no reason to delay returning this matter to the General Division for a reconsideration.

[24] I am returning the matter to the General Division, with directions that it await the outcome of the Claimant’s appeal to the Minister of National Revenue, and that it be bound by that determination, subject to any appeal either party might make to the Tax Court of Canada.

Conclusion

[25] The appeal is allowed. I am setting aside the General Division decision. I am returning the matter to the General Division for a reconsideration, with directions that it obey the matter until the parties receive a final determination on CRA’s ruling. The General Division is bound by that determination.

Janet Lew
Member, Appeal Division

¹¹ See Claimant’s letter dated November 5, 2021, at AD9-2.