



Citation: *US v Canada Employment Insurance Commission*, 2021 SST 740

Social Security Tribunal of Canada Appeal Division

Decision

Applicant: U. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 22, 2021
(GE-21-761)

Tribunal member: Shirley Netten

Decision date: December 6, 2021

File number: AD-21-399

Decision

[1] Leave (permission) to appeal is granted and the appeal is allowed. U. S. (Claimant) is entitled to the employment insurance (EI) benefits she received between September 28, 2020 and January 17, 2021. Because of this, the \$7000 overpayment previously established will be eliminated.

Background

[2] The Claimant took a leave of absence to attend a training course. She received EI benefits but Service Canada later told her that she would have to pay them back, because she had not been available for work. The Tribunal's General Division agreed with Service Canada. The Claimant then asked for permission to appeal to the Appeal Division.

The parties agree on the outcome of the appeal

[3] The parties now agree that permission to appeal should be granted, and the appeal should be allowed, based on an error of law. The parties further agree that the Claimant was in a referred, rather than non-referred, training program and so she was entitled to the EI benefits she received.

I accept the proposed outcome

[4] The General Division made an error of law by not considering or applying section 25(1) of the *Employment Insurance Act*, in light of the Commission's concession. That provision deems a claimant to be capable of and available for work during a period of training referred by the Commission or a designated authority.¹ Only the Commission can decide about the referral of a claimant to a training program.² The Commission takes the position that the Claimant's training program can be considered a referred program. So, as agreed by the parties, I will replace the General Division's decision with the following decision:

The Claimant was deemed to be capable and available for work between September 28, 2020 and January 17, 2021, under

¹ *Employment Insurance Act*, section 25(1)

² *Employment Insurance Act*, section 25(2)

section 25(1) of the *Employment Insurance Act*. She is entitled to the EI benefits that she received during that period.

Conclusion

[5] Permission to appeal is granted and the appeal is allowed. The Claimant is entitled to the EI benefits she received between September 28, 2020 and January 17, 2021.

Shirley Netten
Member, Appeal Division