



Citation: *BG v Canada Employment Insurance Commission*, 2022 SST 148

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: B. G.

Respondent: Canada Employment Insurance Commission
Representative: Sandra Doucette

Decision under appeal: General Division decision dated October 14, 2021
(GE-20-1646 and GE-20-1648)

Tribunal member: Jude Samson

Decision date: March 11, 2022
File number: AD-21-406 and AD-21-407

Decision

[1] I am allowing the appeals in part. The General Division made errors in the way that it joined the appeals, so I am setting aside (cancelling) parts of its decision. I am dismissing the rest of the Claimant's arguments.

[2] I am returning the appeals to the General Division for it to continue its process. The General Division can reconsider joining the appeals; however, it must act fairly and apply the correct legal test.

Overview

[3] B. G. is the Claimant in these appeals. He applied for Employment Insurance (EI) regular and sickness benefits in February 2020. Later, he asked for his sickness benefits claim to start as of April 2011, and for his regular benefits claim to start as of August 2012.¹ The Canada Employment Insurance Commission (Commission) refused his requests.²

[4] These appeals have a long and complex history. The files are thick, including much overlap and duplication. There has also been confusion as to which documents belong in which file. The General Division is actively managing the appeals. It has assigned a Navigator to help the Claimant with procedural and document management issues.

[5] On October 14, 2021, the General Division issued a decision in these appeals. Briefly, the General Division:³

- refused to remove some of the Commission's documents from the appeal record because they were submitted on the wrong file;

¹ Requests to backdate a claim are often referred to as "antedate" requests. The relevant General Division file numbers are GE-20-1646 and GE-20-1648. The Claimant also has a third appeal (with General Division file number GE-20-1606), but that appeal is on hold and is not at issue here.

² Service Canada delivers the EI program for the Commission.

³ The General Division also decided an issue about the use of audio recordings, but the Claimant is not appealing that part of the decision.

- instructed Tribunal staff to put the Commission's documents in the correct files;
- refused to immediately allow the Claimant's appeals because the Commission had not provided all the relevant documents within seven days, as required by the law; and
- joined the Claimant's appeals (files GE-20-1646 and GE-20-1648).

[6] The Claimant now argues that the General Division failed to provide a fair process, exceeded its powers, and made errors of law.

[7] I agree that the General Division acted unfairly and failed to apply the correct legal test when joining the appeals. Although I considered them all carefully, I disagree with the rest of the Claimant's arguments.

Issues

[8] The issues in this appeal are:

- a) Did the General Division make an error of law or act unfairly towards the Claimant by joining the appeals?
- b) Did the General Division make an error of law in the way that it handled the Commission's misfiled documents?
- c) If so, how should the General Division's error be fixed?

Analysis

[9] I can intervene in this case only if the General Division made a relevant error.⁴ In this decision, I focused on whether the General Division acted unfairly towards the Claimant and whether its decision contains any errors of law.

⁴ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act*.

The General Division made an error of law and acted unfairly towards the Claimant by joining the appeals

[10] On May 30, 2021, the Claimant asked the General Division not to join these appeals.⁵ The Claimant and General Division member discussed this request at a pre-hearing conference on July 22, 2021.⁶

[11] During that pre-hearing conference, the General Division member was concerned that she could not fairly decide the appeals if they were heard one after the other. So, she strongly favoured joining the appeals. However, she proposed a solution if the Claimant insisted on having the appeals decided separately. In that case, she would decide the first appeal and have the second one reassigned to a different member.

[12] The Claimant argues that the General Division member allowed him to decide whether the appeals would be joined or decided separately, and gave him until August 31, 2021, to make up his mind. The Claimant says that he wrote to the Tribunal with his decision on August 27, 2021: the appeals should be kept separate.⁷

[13] From that point forward, the Claimant argues that the General Division had effectively decided not to join his appeals. In support of his arguments, the Claimant relies especially on the following:

- the discussion at the pre-hearing conference held on July 22, 2021, where the General Division left the Claimant with the impression that he could decide whether the appeals would be joined;
- the discussion at the pre-hearing conference held on September 2, 2021, where the General Division led the Claimant to believe that it was respecting his choice, and set a timetable for the hearing in appeal GE-20-1646; and

⁵ See document GD22.

⁶ The parties can ask the Tribunal for a copy of this (or any other) audio recording if needed.

⁷ See document GD25.

- the General Division's letter dated September 22, 2021, which only refers to file GE-20-1646, and provides no warning that it was still considering whether to join the appeals.⁸

[14] I agree that the General Division acted unfairly towards the Claimant in this case. The General Division led the Claimant to believe that it would not join the appeals and then, without warning, it joined them anyway.

[15] When joining the appeals, the General Division also made errors of law.

[16] On the one hand, the law provides a legal test that describes when the Tribunal can join two or more appeals.⁹ However, the General Division never mentioned this legal test, making it difficult to assess whether the General Division considered the relevant factors.

[17] And on the other hand, the General Division wrote several paragraphs that seem to narrow the issues under appeal.¹⁰ In my view, these paragraphs were unnecessary in a decision about joining two appeals and potentially unfair without proper notice to the parties.

The General Division did not make an error of law in the way that it handled the Commission's misfiled documents

[18] The Claimant continues to insist that the Commission failed to follow the letter of the law by filing documents in the wrong appeal files.¹¹ Specifically, the law says that the Commission must provide the General Division with its written submissions, and other relevant documents, within seven business days of when it learns of a new appeal.¹²

⁸ See document GD30 (marked with file GE-20-1646) and paragraph 21 of the General Division decision.

⁹ This test is set out in section 13 of the *Social Security Tribunal Regulations* (SST Regulations).

¹⁰ See, for example, paragraphs 49-50, 57, and 62-63 of the General Division decision.

¹¹ The Claimant refers specifically to documents GD3 (the Commission's so-called reconsideration file) and GD4 (the Commission's representations).

¹² This requirement is in section 30 of the SST Regulations.

[19] The Claimant argues that the Commission should not be allowed to ignore the law with impunity. Instead, he says that the General Division should have removed the late documents from the record and immediately allowed his appeals.¹³

[20] The Claimant has not provided any authority for the remedy that he requested. I am not aware of any authority that would support his position either. The Claimant needs to prove that the General Division should backdate his EI claims based on the law and all the facts of his case. The Tribunal does not allow appeals or award benefits based on minor mix-ups.

[21] In my view, the General Division was rightly concerned with ensuring that the Claimant received a fair process.

[22] On this score, the Claimant has not shown that he suffered any prejudice. Though some documents were misfiled, the Claimant had all relevant documents at all relevant times. The General Division appropriately handled any lingering concerns the Claimant might have had by fixing the mistake in the record and giving the Claimant more time to make his arguments.¹⁴

[23] Indeed, from listening to the recording of the pre-hearing conferences, it seems that the Claimant was aware of the mix-up much earlier, but chose to wait until the last minute to raise the issue. As a result, a decision in these appeals has been further delayed.

Fixing the General Division's error

[24] I decided that the General Division acted unfairly towards the Claimant and made errors of law when it joined his appeals.

[25] In the circumstances, I am setting aside (or cancelling) paragraphs 47 to 64 and 68 of the General Division decision. However, the General Division is free to

¹³ The Claimant highlights how he had only asked for this in one file (GE-20-1646) but admits that, if it had been successful, he likely would have made the same request in the other file (GE-20-1648): see paragraph 28 on page AD1-8.

¹⁴ See document GD30.

reconsider the issue of joining the appeals, so long as it provides a fair process and applies the correct legal test. In other words, the General Division could decide to join the appeals once again.

[26] The Claimant argues that the appeals should not be joined because of his particular needs. Indeed, the General Division has to take the Claimant's needs into account.¹⁵ However, I would simply highlight that there are many ways for the General Division to accommodate the Claimant's needs, even if it joins the appeals.

[27] The General Division has already offered to have this discussion with the Claimant.¹⁶ And I am pleased to learn that the Commission has appointed a representative to participate in these appeals going forward.

Conclusion

[28] I am allowing the Claimant's appeals in part. The General Division made errors when joining the appeals. As a result, I am cancelling paragraphs 47 to 64 and 68 of its decision. I am dismissing the rest of the Claimant's arguments. Finally, I am returning the appeals to the General Division for it to continue its process.

Jude Samson
Member, Appeal Division

¹⁵ See section 13(b) of the SST Regulations.

¹⁶ See paragraph 64 of the General Division decision.