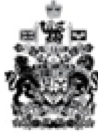

Citation: *Canada Employment Insurance Commission v SS*, 2022 SST 283

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Respondent:	S. S.
Representative:	E. A.

Decision under appeal:	General Division decision dated October 25, 2021 (GE-21-1532)

Tribunal member:	Melanie Petrunia
Type of hearing:	Teleconference
Hearing date:	February 8, 2022
Hearing participants:	Appellant's representative Respondent Respondent's representative
Decision date:	April 14, 2022
File number:	AD-21-383

Decision

[1] The appeal is allowed.

Overview

[2] The Respondent (Claimant) applied for Employment Insurance (EI) benefits and a claim for emergency response benefits (EI ERB) was started. The Claimant's EI ERB claim was then automatically transitioned to regular EI benefits starting October 4, 2020.

[3] As a temporary measure, the Employment Insurance Act (EI Act) was amended to provide a one-time increase in insurable hours (one-time credit). The Appellant (Commission) applied these hours to the Claimant's claim for regular benefits effective October 4, 2020. The Claimant collected these benefits until April 2021, when she got another job and stopped collecting benefits.

[4] On June 4, 2021, the Claimant applied for maternity and parental benefits. Prior to this, she had asked the Commission to terminate her old benefit period as she wanted to start a new claim for maternity and parental benefits.

[5] The Commission advised the Claimant that she did not have enough hours of insurable employment to start a new claim for maternity and parental benefits. The Commission therefore reactivated the Claimant's old claim from October 4, 2020, but this would not allow her to collect her full allotment of maternity and parental benefits. The Claimant asked for reconsideration.

[6] The Claimant wanted the one-time credit to apply to a new claim for maternity and parental benefits. She did not need the one-time credit for the claim for regular benefits because she had more than enough insurable hours in her qualifying period.

[7] Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[8] The General Division found that the one-time credit should not have been applied to the benefit period that began on October 4, 2020, so those hours would be available to be applied to a subsequent benefit period, if needed.

[9] The Commission is now appealing the General Division's decision. It submits that the General Division erred in law in its interpretation of section 153.17 of the EI Act.

[10] I am allowing the Commission's appeal.

Issues

[11] The issues in this appeal are:

a) Did the General Division err in law in its interpretation of section 153.17 of the EI Act?

b) If so, how should the error be fixed?

Analysis

[12] I can intervene in this case only if the General Division made a relevant error, which is known as a "ground of appeal."[1] One of the grounds of appeal is that the General Division made an error of law in making its decision. The interpretation of legislation is a question of law.[2]

– **The General Division decision**

[13] The General Division found that the one-time credit should not have been applied to the Claimant's October 4, 2020 claim. It decided that the legislation does not explicitly say that it must apply to the first claim made after September 27, 2020.[3] It found that automatically applying the credit the first claim produces an absurd result that is contrary to the intention of the legislation.[4]

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[1] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the grounds of appeal.
[2] See *Canada (Attorney General) v Trochimchuk*, 2011 FCA 268 at paragraph 7.
[3] See General Division decision at paragraph 37.
[4] See General Division decision at paragraph 23.

[14] In its analysis, the General Division considered the wording of section 153.17(1)(a) and (b) of the EI Act. This section reads:

> **153.17 (1)** A claimant who makes an initial claim for benefits under Part I on or after September 27, 2020 or in relation to an interruption of earnings that occurs on or after that date is deemed to have in their qualifying period
>
> **(a)** if the initial claim is in respect of benefits referred to in any of sections 21 to 23.3, an additional 480 hours of insurable employment; and
>
> **(b)** in any other case, an additional 300 hours of insurable employment.

[15] The General Division considered three decisions of the General Division which were cited by the Commission.[5] These decisions all found that the one-time credit had to be applied to the first claim made on or after September 27, 2020.

[16] The General Division found that these decisions focused on the word "deemed" and it rejected the reasoning in those decisions that this wording meant that the one-time credit must apply to the first claim.[6] The General Division found that section 153.17(1) does not explicitly say that the one-time credit must apply to the first claim and therefore the words of the section are not clear.

[17] Finding that the words of the section are not clear, the General Division decided that the section should be interpreted in a way that best meets the overriding purpose of the statute.[7] It found that applying the one-time credit to the first claim, when the hours are not needed, and denying those hours to a later claim when they are needed results in an absurdity.[8]

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[5] See GD4-9 and GD8-1.
[6] See General Division decision at paragraph 35.
[7] See General Division decision at paragraph 45
[8] See General Division decision at paragraph 51.

The General Division made an error of law in its interpretation of section 153.17

[18] The Commission argues that the General Division made an error of law when it found that the one-time credit should be deferred to the Claimant's new claim, in June 2021.

[19] The Commission argues that the law clearly states that a claimant is deemed to have additional hours if they make an initial claim for EI benefits on or after September 27, 2020. It says that there is no room for discretion and no mechanism that allows the Commission or a claimant to waive the application of the additional hours if they are not needed. The purpose is to increase a claimant's insurable hours in their qualifying period on their first application for EI benefits on or after September 27, 2020.

[20] The Claimant argues that the General Division's interpretation was correct. The Claimant says that the interpretation that the Commission supports frustrates the intention of the EI Act. She argues that the deeming provision creates a rebuttable presumption but doesn't mean that the additional hours must apply to the first claim.

[21] The Claimant argues that the Commission's interpretation of this section hurts women and that the better approach is to take a fair, large and liberal interpretation.[9] She says that the legislation is not clear and that the General Division's interpretation was not an error of law.

[22] The General Division's analysis considered only the wording of section 153.17(1) of the EI Act. It makes no reference to the rest of that section, namely the limitation in section 153.17(2). I find that the General Division made an error of law when it decided that the wording of the section is ambiguous.

[23] The General Division rejected the reasoning in other decisions, finding that those decisions focused on the word "deemed".[10] It stated that it did not find the reasoning

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[9] The Claimant refers to the decision in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27.
[10] See General Division decision at paragraph 35.

persuasive; however, the General Division did not offer another interpretation of "deemed" in that section.

[24] Since the General Division's decision in this matter, the Appeal Division has also considered the wording of section 153.17 of the EI Act.[11] These decisions have found:

- There is no ambiguity in the section.
- The language of deeming in section 153.17 means that there is no discretion available on the part of the Commission.
- The law does not provide an option to apply the additional hours to a future claim.

[25] When a claimant makes an initial application for benefits on or after September 27, 2020 they are deemed to have an additional 300 or 480 hours of insurable employment in their qualifying period. The plain meaning of this section is clear and unambiguous.

[26] The General Division found that the section does not explicitly say that a claimant is deemed to have the additional hours in their **first** initial claim. However, the language is clear that the additional hours will be included when **an** initial claim is made. The Commission does not have any discretion not to include the additional hours when the first the initial claim is made.

[27] Read on its own, section 153.17(1) could suggest that a claimant is deemed to have the additional hours applied to all initial claims made on or after September 27, 2020. The limitation in section 153.17(2) then clarifies that the credit will only apply to the first initial claim. This section reads:

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[11] See *Canada Employment Insurance Commission v NK,* 2021 SST 601, *Canada Employment Insurance Commission v SF,* 2022 SST 21 and *DM* v *Canada Employment Insurance Commission*, 2021 SST 472.

Limitation

(2) Subsection (1) does not apply to a claimant who has already had the number of insurable hours in their qualifying period increased under that subsection or under this section as it read on September 26, 2020, if a benefit period was established in relation to that qualifying period.

[28] When the section is read as a whole, it is clear that the additional hours will only apply to the first claim.

[29] I agree with the Commission, and the decisions of the Appeal Division. Section 153.17(1) requires that the additional hours be included in the qualifying period of the first initial claim made after September 27, 2020. The limitation in section 153.17(2) means that the additional hours cannot also be included in a subsequent qualifying period.

[30] The section is meant to help claimants who do not have enough hours of insurable employment establish a benefit period. It is not meant to help claimants who have enough hours of insurable employment when applying on or after September 27, 2020 establish a later benefit period.[12]

[31] The General Division erred in law in its interpretation of section 153.17 of the EI Act. The section is not ambiguous and cannot be interpreted as though the additional hours are only deemed to be included in a claimant's qualifying period if they are needed.

Remedy

[32] At the hearing, both the Commission and the Claimant said that I should make the decision that the General Division should have made if I found that there was an error. Both parties had an opportunity to present their case before the General Division and the record is complete. I agree that it is appropriate for me to make the decision in this matter.

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[12] See *Canada Employment Insurance Commission v SF,* 2022 SST 21 at paragraph 19.

[33] The Claimant argues that the Appeal Division does not exercise a superintending power over the General Division and that the standard of review of the General Division decision should be reasonableness. She says that the General Division decision was reasonable.

[34] When a court reviews a decision that interprets a statute, the court decides whether the decision is reasonable (not whether it is correct), and asks if it is transparent, intelligible, and justified.[13] An appeal to the Appeal Division isn't a judicial review. The Appeal Division has as much expertise as the General Division and does not owe any deference to the General Division.[14]

[35] I am sympathetic to the Claimant's circumstances and I understand her frustration. However, for the reasons stated above, I find that the legislation is clear. The one-time credit was properly applied to the qualifying period for the Claimant's October 4, 2020 claim. The additional hours were not available to be applied to the qualifying period for a later claim.

Conclusion

[36] The appeal is allowed.

Melanie Petrunia
Member, Appeal Division

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[13] See *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 15.
[14] See *Canada (Attorney General)* v *Jean*, 2015 FCA 242 at paragraph 19 and *Maunder* v *Canada (Attorney General)*, 2015 FCA 274.