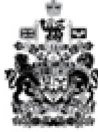

Citation: *DL v Canada Employment Insurance Commission*, 2022 SST 414

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	D. L.
Respondent:	Canada Employment Insurance Commission
Representative:	M. Allen

Decision under appeal:	General Division decision dated December 3, 2021 (GE-21-2069)

Tribunal member:	Melanie Petrunia
Type of hearing:	Videoconference
Hearing date:	May 18, 2022
Hearing participants:	Appellant Respondent's representative
Decision date:	May 25, 2022
File number:	AD-22-12

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant (Claimant) applied for Employment Insurance (EI) regular benefits in March 2020. He received the EI Emergency Response Benefit (EI ERB) from March 15, 2020 to September 26, 2020. Then, the Respondent (Commission) started a new benefit period for the Claimant starting September 27, 2020. He received 50 weeks of regular EI benefits until September 11, 2021.

[3] The Claimant worked during the summer of 2021 and accumulated 162 hours of insurable employment. He applied for regular EI benefits again on September 21, 2021. He believed he only needed 120 hours to qualify for benefits because of a one-time additional hours credit.

[4] The Commission determined that the Claimant did not have enough hours to start a benefit period. It decided that he could not use the credit of additional hours because the credit had already been applied to his previous claim. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division concluded that the Commission correctly applied the credit of additional hours to the Claimant's qualifying period for his benefit period that started September 27, 2020.

[6] The Claimant is now appealing the General Division's decision. He argues that the General Division did not follow procedural fairness, made an important error of fact and an error of law.

[7] I find that the General Division did not make any errors of law and did not overlook, misconstrue or mischaracterize any important evidence. I do not find that

there was any failure by the General Division to follow procedural fairness. I am dismissing the appeal.

Issues

[8] The issues in this appeal are:

a) Did the General Division fail to follow procedural fairness because it did not obtain a transcript of a phone call between the Claimant and a Commission agent?

b) Did the General Division make an important error of fact when it found that the Claimant made an initial claim for benefits on September 27, 2020?

c) Did the General Division make an error of law by relying on the wrong version of the legislation?

Analysis

[9] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:[1]

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

[10] The interpretation of legislation is a question of law.[2]

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[1] The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).
[2] See *Canada (Attorney General) v Trochimchuk*, 2011 FCA 268 at paragraph 7.

– **The General Division decision**

[11] The General Division found that the Claimant made an initial claim for benefits after September 27, 2020, by continuing claims for EI regular benefits after his EI ERB ended. It found that the Commission correctly applied the credit of additional hours to the qualifying period for the Claimant's benefit period starting September 27, 2020.[3]

[12] The General Division decided that the Claimant's qualifying period for his September 2021 claim was from September 27, 2020 to September 11, 2021.[4] The Claimant had worked 162 hours in this period and needed 420 insurable hours to qualify for EI regular benefits. Because the additional hours had been applied to the previous qualifying period, the Claimant could not benefit from them again.[5]

[13] The General Division found that the Claimant had not worked enough hours to qualify for benefits and dismissed the appeal.[6]

Did the General Division fail to follow procedural fairness?

[14] The Claimant argues that the General Division did not follow procedural fairness. He says that he had a phone call with a Commission agent who told him that the Commission made an error when it applied the additional hours credit to EI applicants who already had enough insurable hours.

[15] There is a summary of this call in the record, but the Claimant says that it is incomplete.[7] The Claimant requested that the Tribunal obtain a transcript of this call but says that it was not obtained or discussed at the hearing.[8] The Claimant also made an application under the *Privacy Act* for this transcript and was told that there was no record.[9]

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[3] See General Division decision at para 28.
[4] See General Division decision at para 42.
[5] See General Division decision at para 44.
[6] See General Division decision at para 45.
[7] GD3-75 and GD3-76
[8] AD1-9
[9] AD3-2

[16] The Claimant argues that these comments by the Commission agent created an estoppel and confirmed that the Commission had made a mistake.

[17] I have listened to the hearing before the General Division and do not agree with the Claimant that there was any failure to follow procedural fairness. The Claimant made these arguments before the General Division and explained his position about the accuracy of the summary of the phone call. The General Division was not required to obtain a transcript of the Claimant's phone call. Furthermore, ATIP Officer confirmed that there was no transcript.

[18] Even if there had been a transcript confirming that a Commission agent told the Claimant that an error was made, this would not have affected the decision of the General Division. It is well established that misinformation from the Commission does not provide any relief.[10] The General Division was required to interpret and apply the law, despite any comments that Commission agents may have made to the Claimant.

Did the General Division make an important error of fact?

[19] The Claimant argues that the General Division made an important error of fact when it decided that he made an initial claim for benefits on or after September 27, 2020. He says that he made an initial claim for benefits on March 20, 2020, which supersedes the emergency response benefits.

[20] The Claimant submitted an application for EI regular benefits on March 20, 2020 stating that his last day worked was March 13, 2020.[11] This means that his benefit period would have started on March 15, 2020.

[21] The *Employment Insurance Act* (Act) says that a claim for regular EI benefits made after March 15, 2020 is deemed to be a claim for the EI ERB.[12] The Act also says that no benefit period can be established for regular EI benefits between March 15 and September 26, 2020.[13] So, the claim that the Claimant made on March 20, 2020 was

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[10] See *Canada (Attorney General) v. Shaw*, 2002 FCA 325.
[11] GD3-7
[12] *Employment Insurance Act*, section 153.1310
[13] *Employment Insurance Act*, sections 153.8(5), 153.5(3)(a)

deemed to be a claim for the EI ERB. The Claimant received EI ERB benefits from March 15, 2020 to September 26, 2020.

[22] After the EI ERB, the earliest that the Commission could establish the Claimant's benefit period for regular EI benefits was September 27, 2020. The Commission states that the claim made on March 20, 2020 was carried forward. There was deemed to be an initial claim for benefits in September 2020 and a benefit period was established immediately following the EI ERB claim.

[23] The General Division found that the Claimant was notified that his EI ERB benefits were ending and that he would automatically be changed to regular EI benefits if he qualified. A benefit period was then established for the Claimant as of September 27, 2020.[14]

[24] The General Division did not make an error of fact when it decided that the Claimant made an initial claim for benefits on or after September 27, 2020. The application of the temporary measures in the Act mean that the Claimant made an initial claim for benefits on or after September 27, 2020 even though the application form that he initially submitted was on March 20, 2020.

Did the General Division make an error of law by relying on the wrong version of the legislation?

[25] The Claimant argues that the General Division made an error of law by relying on the wrong legislation. He says that the temporary measures were not in place when he applied for benefits on March 20, 2020.

[26] The temporary measures deemed the Claimant's March 20, 2020 application to be an application for EI ERB. These temporary measures also provided that no benefit period could be established between March 15, 2020 and September 26, 2020. The changes were brought in by way of interim orders which had retroactive effect to March

[14] See General Division decision at para 26 and 27.

15, 2020.[15] This means that they were deemed to have come into force on March 15, 2020.

[27] The General Division did not make an error of law by relying on the wrong version of the legislation.

[28] I understand the Claimant's frustration. However, the legislation says that a claim for regular EI benefits made after March 15, 2020 is deemed to be a claim for the EI ERB and that no benefit period can be established for regular EI benefits between March 15, 2020 and September 26, 2020.

[29] The Claimant's benefit period for regular EI benefits was established September 27, 2020 and the Commission properly applied the one-time credit of additional hours. This means that the Claimant could not have those hours applied to a later claim. As a result, the Claimant did not have sufficient hours to qualify for benefits on September 11, 2021.

[30] The Appeal Division has considered other cases where the claimants applied for regular EI benefits before September 27, 2020 and were deemed to have applied for EI ERB. The Commission considered the claims made after the transition to regular EI benefits after September 27, 2020 to be initial claims for benefits. These claimants also wanted the additional hours to be applied to later claims because they were not needed when they were applied.[16]

[31] It is clear that the Commission did not have any discretion not to apply the additional hours to the September 27, 2020 claim.

[32] The General Division properly considered and applied the relevant sections of the legislation. The General Division did not make any errors of law.

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[15] See *Interim Order No. 6 Amending the Employment Insurance Act (Employment Insurance Emergency Response Benefit)*: SOR/2020-169 (July 22, 2020, but retroactive to March 15, 2020) at sections 1, 4, 5 and 8.

[16] See *Canada Employment Insurance Commission v SS*, 2022 SST 283, *Canada Employment Insurance Commission v NK*, 2021 SST 601, and *DM v Canada Employment Insurance Commission*, 2021 SST 472.

Conclusion

[33] The appeal is dismissed. The General Division did not make any errors of law and did not overlook, misconstrue or mischaracterize any important evidence. I do not find that there was any failure by the General Division to follow procedural fairness.

Melanie Petrunia
Member, Appeal Division