



Citation: *SH v Canada Employment Insurance Commission*, 2022 SST 517

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: S. H.

Respondent: Canada Employment Insurance Commission
Representative: Gilles-Luc Bélanger

Decision under appeal: General Division decision dated October 5, 2021
(GE-21-1365)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference

Hearing date: June 2, 2022

Hearing participants: Appellant
Respondent's representative

Decision date: June 15, 2022

File number: AD-21-363

Decision

[1] The appeal is allowed. The file returns to the General Division in order that it reconsider all issues.

Overview

[2] The Respondent (Commission) determined that the Appellant fraudulently collected EI benefits on five occasions, totalling \$4,190.00. It found that the Appellant provided her bank account information to her ex-boyfriend so that someone else's EI benefits could be deposited in her bank account while that person was in jail.

[3] Because of this, the Commission imposed a penalty of \$1,257.00 to the Appellant. It asked that the Appellant pay back the EI payments that she was not entitled to receive. The Commission also issued a notice of violation. Upon reconsideration, the Commission maintained its initial decision. The Appellant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Appellant (it refers to Claimant in the decision) admitted to giving her bank information to her ex-boyfriend in order to receive EI payments belonging to his friend who was in jail. It found that the Appellant knew that the EI payments did not belong to her, but she did not report it to the Commission. The General Division concluded that the Appellant knowingly provided false or misleading information to the Commission to receive benefits for which she was not entitled to, that justified the imposition of a penalty and the issuance of a notice of violation.

[5] The Appeal Division granted the Appellant leave to appeal of the General Division's decision. She submits that the General Division did not consider the evidence before it and that she should only repay the amount that stayed in her bank account.

[6] I must decide whether the General Division made an error in deciding the issue of penalty and whether it did not decide an issue that it should have decided.

Issues

[7] Issue no 1: Did the General Division make an error in deciding the issue of penalty?

[8] Issue no 2: Did the General Division make an error by not deciding an issue that it should have decided?

Analysis

Appeal Division's mandate

[9] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[10] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.²

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, I must dismiss the appeal.

¹ *Canada (Attorney general) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney general)*, 2015 FCA 274.

² *Idem*.

Did the General Division make an error in deciding the issue of penalty?

[12] At the Appeal Division hearing, the Appellant put forward that the General Division ignored the fact that she was not aware of the scheme established by her ex-boyfriend and that she was caught between the claimant and her ex-boyfriend. She puts forward that she is not the one who made a claim and filed reports. She submits that she gave most of the money to her ex-boyfriend and that she should only pay back what remained in her bank account.

[13] I note that throughout its decision, the General Division refers to the Appellant as the Claimant. However, the Appellant is not the Claimant in the present matter. She is a third party to the claim.

[14] In its representations to the General Division, the Commission sometimes refers to the Appellant as the claimant and other times as a third party, which might explain the General Division's confusion.³

[15] I am of the view that the General Division did not properly address the issue of penalty and notice of violation that was before it. It had to decide whether the Commission could impose a penalty and issue a notice of violation to the Appellant, a third party to the claim.⁴

[16] I am therefore justified to intervene on the issue of penalty.

Issue no 2: Did the General Division make an error by not deciding an issue that it should have decided?

[17] I note that the Commission made representations to the General Division that the Appellant is liable to repay the amounts paid by the Commission pursuant to section 43 and 44 of the EI Act.⁵

³ See in particular GD4-2 and GD4-5.

⁴ Section 38 of the *Employment Insurance Act* (EI Act) refers to "any other person acting for a claimant".

⁵ See GD4-1.

[18] However, I find that the General Division did not decide this issue.

[19] The Commission agrees with the Appeal Division that in failing to make a decision on the obligation to repay the benefits, the General Division failed to exercise its jurisdiction.⁶

[20] I am therefore justified to intervene on this issue.

Remedy

[21] I find that the General Division did not properly address the issue of penalty and did not address the issue of repayment. I therefore cannot render the decision that the General Division should have given.⁷

[22] I have no choice but to return the file to the General Division in order that it reconsider all issues.

Conclusion

[23] The appeal is allowed. The file returns to the General Division in order that it reconsider all issues.

Pierre Lafontaine
Member, Appeal Division

⁶ See AD5-2.

⁷ See section 59(1) of the DESD Act.