



Citation: *CE v Canada Employment Insurance Commission*, 2022 SST 328

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: C. E.

Respondent: Canada Employment Insurance Commission
Representative: J. Lachance

Decision under appeal: General Division decision dated July 9, 2021
(GE-21-991)

Tribunal member: Melanie Petrunia

Type of hearing: Teleconference

Hearing date: May 25, 2022

Hearing participants: Appellant
Respondent's representative

Decision date: August 10, 2022

File number: AD-21-281

Decision

[1] The appeal is allowed. The Claimant is disentitled from receiving benefits from December 17, 2020 until March 26, 2021.

Overview

[2] The Applicant (Claimant) applied for regular employment insurance (EI) benefits. Later, he left Canada on December 2, 2020 to attend his mother's funeral and to care for his sister who was ill. The Claimant's sister also passed away while he was caring for her.

[3] The Claimant got sick while outside Canada and had to delay his return. The Commission applied an exemption so that he could receive EI benefits for seven days to attend his mother's funeral. The Claimant was disentitled from receiving benefits from December 9, 2020 to March 26, 2021, because he was not in Canada.

[4] Upon reconsideration, the Commission allowed an additional seven-day exemption to the maximum 14 days. The disentitlement from December 17, 2020 until March 26, 2021 remained unchanged. The Claimant appealed this reconsideration decision to the General Division.

[5] The General Division determined that the Claimant is entitled to a seven-day exemption from disentitlement either to attend his mother's funeral, or to care for his ill sister, and that he could not combine the exemptions for these two family members. The General Division imposed a disentitlement from December 9, 2020 to March 26, 2021.

[6] The Claimant is now appealing the General Division decision to the Appeal Division. He submits that the General Division made an error because the Commission had allowed an additional seven days to the maximum 14 days, and he was not appealing the period of December 9 to December 16, 2020.

[7] I have decided that the General Division failed to provide a fair process and exceeded its jurisdiction. I am also giving the decision that the General Division should have given which is that the Claimant is disentitled from receiving benefits from December 17, 2020 until March 26, 2021.

Issues

[8] I have focused on the following issues:

- a) Did the General Division fail to provide a fair process?
- b) Did the General Division exceed its jurisdiction by imposing a longer period of disentitlement than the Commission had determined on reconsideration?
- c) If so, how should the error be fixed?

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.

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).

Background

[10] The Claimant left Canada on December 1, 2020 to care for his ill sister and attend the funeral of his mother.² He was planning to return to Canada on February 6, 2021 but he contracted COVID-19 and was not able to return until March 26, 2021.³

[11] Claimants are not entitled to receive benefits for any periods that they are not in Canada.⁴ There are some exceptions to this rule including leaving to visit an ill family member and to attend the funeral of a family member.⁵ These two exemptions can be combined when the funeral is for the same family member that the claimant travelled to visit while ill.⁶

[12] The Commission initially applied a seven-day exemption and decided the Claimant was disentitled from receiving benefits from December 10, 2020 to March 27, 2021.⁷ The Claimant requested a reconsideration of this decision stating that he felt he should be paid EI benefits from the period from February 4 to March 25, 2021.⁸

[13] With the request for reconsideration, the Claimant included an invitation to the burial ceremony of his sister. She passed away on March 11, 2021 and the funeral services were on April 3rd and 4th, 2021.⁹ The Claimant explained that he was providing care to his ill sister who had had fibroid surgery. Unfortunately, she passed away while he was outside of Canada visiting her.¹⁰

[14] The Commission changed its decision on reconsideration and allowed an additional seven days to the period that benefits were payable to the Claimant while

² General Division decision at para 2.

³ General Division decision at para 12.

⁴ See section 37(b) of the *Employment Insurance Act*.

⁵ See section 55(1) of the *Employment Insurance Regulations*.

⁶ See section 55(1.1) of the *Employment Insurance Regulations*.

⁷ GD3-16

⁸ GD3-17

⁹ GD3-21

¹⁰ GD3-31

outside of Canada. The reconsideration decision states that the Claimant is disentitled from December 17, 2020 to March 26, 2021.¹¹

[15] The Claimant appealed to the Tribunal's General Division. He stated in his Notice of Appeal that he disagreed with the decision not to pay benefits from December 17, 2020 to March 26, 2021.¹²

– **The General Division decision**

[16] The General Division decision states that the Claimant's appeal is dismissed. It found that the Claimant was not entitled to receive EI benefits for the period from December 9, 2020 to March 26, 2021 while he was not in Canada.

[17] The General Division states in its overview that the Commission disentitled the Claimant for the period from December 9, 2020 to March 26, 2021 and that the Claimant argues he should be paid EI benefits for the full period that he was outside Canada on compassionate grounds.¹³

[18] Later in the decision, the General Division notes that the reconsideration decision states that the Commission added an additional seven-day exemption but the Commission was now arguing it cannot grant the additional days.¹⁴ It then goes on to consider the Claimant's circumstances while outside of Canada, including his mother's funeral, his sister's illness and death and the fact that he contracted COVID-19 and was not able to return when he planned to.

[19] The General Division states in its decision that the Claimant had not read the Commission's submissions and it allowed him 30 minutes to do so at the start of the hearing.¹⁵

¹¹ GD3-32

¹² GD2-4

¹³ General Division decision at para 2.

¹⁴ General Division decision at para 10.

¹⁵ General Division decision at para 3.

– **The General Division hearing**

[20] I have listened to the recording of the hearing before the General Division. At the hearing, the General Division states that the only issue in the appeal is whether the Claimant is entitled to benefits while outside of Canada and tells the Claimant that he will have to show that he meets one of the exceptions in the EI Act.¹⁶

[21] The General Division asked the Claimant about the reasons why he left Canada.¹⁷ The Claimant stated that he left to attend to his kid sister who was sick and to bury his mother. The General Division asked the Claimant about comments made to the Commission that he had left to attend the funeral and is asked what the primary reason was. The Claimant stated that it was to bury his mother and care for his sister who was going for surgery, but that he didn't say that initially.¹⁸

[22] The General Division asked the Claimant if any of the other exemptions in the EI Regulations applied to him other than attending his mother's funeral and caring for his sick sister and he confirms that it is only those two.¹⁹

[23] The General Division stated at the hearing that there are two different places where the period of disentitlement is referred to and it directed the Claimant to the Commission's submissions. It says that the Commission's submission address a disentitlement from December 9, and tells the Claimant that the Commission gave him an exemption of 7 days to attend his mother's funeral. The Claimant is asked if he would like to comment on this and his response focused on the EI Regulations not taking into consideration the amount of time it takes to travel to Africa.²⁰

[24] The General Division stated at the hearing that the Commission's position is that it can't give the Claimant an exemption for visiting his sick sister. In response, the Claimant explained that he did not know why because he was her next of kin.²¹ He

¹⁶ Recording of the General Division hearing at 20:10 to 20:48.

¹⁷ Recording of the General Division hearing starting at 21:00.

¹⁸ Recording of the General Division hearing at 21:20 to 23:25.

¹⁹ Recording of the General Division hearing at 25:10.

²⁰ Recording of the General Division hearing at 28:00 to 29:05.

²¹ Recording of the General Division hearing at 31:05.

explained that he had brought back documents confirming that she had passed away. The Claimant's arguments focused on the fact that he provided sufficient proof that he travelled to visit his ill sister and she passed away while he was there.

[25] The General Division concluded the hearing by stating that it will decide if the Claimant's appeal should be allowed or dismissed.²²

– **The Claimant's appeal to the Appeal Division**

[26] The Claimant's position in this appeal is that the Commission already decided he would be paid benefits for 14 days. He cannot understand why he is now being asked to pay back some of those benefits and he believed that his entitlement for that period was already decided in his favour. The Claimant is not taking issue with the decision with respect to the period from December 17, 2020 to March 26, 2021.

[27] The Commission states that there are grounds to appeal the decision. It argues that the General Division failed to apply the proper test because it did not consider that section 55 of the EI Regulations is subject to section 18 of the EI Act. It states that this was an error of law.

[28] However, the Commission states that this error does not affect the outcome. It argues that the correct interpretation of section 55 of the EI Regulations still leads to the result that the Claimant is not entitled to receive EI benefits while outside of Canada except for the first seven consecutive days to attend the funeral of his mother.

[29] The Commission argues that it did not change the reconsideration decision after the Claimant filed his Notice of Appeal to the General Division. It says that the disentitlement was only modified when the General Division decision was implemented.

[30] The Commission argues that its position regarding the additional seven-day exemption changed after the Claimant filed his Notice of Appeal. It acknowledges that this was not clearly explained in its submissions to the General Division. The

²² Recording of the General Division hearing at 38:35.

Commission says that it should have explained that its reconsideration decision was not correct and it was recommending that the General Division modify it.²³

The General Division failed to provide a fair process and exceeded its jurisdiction

[31] In listening to the hearing, it is not clear that the Claimant understood that the General Division would be considering the Claimant's entitlement for the period from December 9 to December 16, 2020. The Claimant's entitlement during this period had already been decided by the Commission and was not a period that the Claimant was appealing.

[32] The Claimant's Notice of Appeal to the General Division stated that he disagreed with the decision not to pay benefits from December 17, 2020 to March 26, 2021. When the General Division advised that it would decide whether to dismiss or allow his appeal, it may not have been clear to the Claimant that dismissing the appeal could result in a change to the Commission's reconsideration decision.

[33] I find that the General Division failed to provide a fair process by not explaining to the Claimant that his entitlement to the additional seven-day exemption allowed by the Commission on reconsideration was an issue it was considering. As the Commission acknowledges, this was not clearly explained in its submissions to the General Division.

[34] I also find that the General Division exceeded its jurisdiction by making a decision about the Claimant's entitlement to benefits for a period that the Commission had already decided benefits were payable. The issue before the General Division was the Claimant's entitlement to benefits for the period from December 17, 2020 to March 26, 2021. It exceeded its jurisdiction by making a decision regarding the Claimant's entitlement to benefits beyond this period.

²³ AD3-4

Fixing the error

[35] I have found that the General Division made an error. I can send the appeal back to the General Division for reconsideration or give the decision that the General Division should have given.²⁴

[36] At the hearing, both the Claimant and the Commission said that I should make the decision if I find that there was an error. I agree. I find that it is appropriate to give the decision that the General Division should have given. The facts are not in dispute. The Claimant's appeal addresses only the additional week from December 9 to December 16, 2020, which I have found was not within the General Division's jurisdiction to consider.

– **The Claimant is not entitled to receive benefits from December 17, 2020 to March 26, 2021**

[37] The Claimant acknowledged at the hearing before the General Division that he did not meet any of the other exemptions under section 55 of the EI Regulations, other than visiting an ill family member and attending the funeral of a family member.

[38] There is no dispute that the Claimant was outside Canada for the period at issue. The Claimant does not take issue with the period after December 17, 2020. He is only appealing the additional week that the Commission allowed in the reconsideration decision.

[39] Commission argues that General Division properly applied Section 55 of the EI Regulations. It states that the reconsideration decision was wrong and the General Division could not overlook or ignore the correct application of the law. Once the appeal was filed, the Commission also could not ignore the proper application of the law. It says that, although the General Division should have considered section 18 of the EI Act the decision is still reasonable.

²⁴ See section 59(1) of the *Department of Employment and Social Development Act*, which gives me this authority.

[40] The Claimant argues that he was granted an additional week on reconsideration. He argues that there was no argument before the General Division about the week from December 9 to December 16, 2020 and therefore no decision should have been made about this period.

[41] The General Division's jurisdiction is limited to considering only those issues raised in the reconsideration decision. The Commission decided that benefits were payable to the Claimant for the period from December 9 to December 16, 2020 and that he was disentitled from December 17, 2020 to March 26, 2021. This was the decision that the Claimant appealed.

[42] The Claimant argued that he should be entitled to be paid benefits while outside of Canada after he contracted COVID-19 and could not return. It is clear in his Notice of Appeal that he was disputing the decision to maintain the disenitment from December 17, 2020 to March 26, 2021. Now, the Claimant says that he no longer takes issue with that period of disenitment.

[43] I agree with the Claimant that he was not entitled to receive benefits while outside of Canada from December 17, 2020 to March 26, 2021. He does not meet any of the exemptions under section 55 of the EI Regulations.

Conclusion

[44] The appeal is allowed. The General Division failed to provide a fair process and exceeded its jurisdiction.

[45] I have made the decision that the General Division should have made. The Claimant is not entitled to receive EI benefits for the period from December 17, 2020 to March 26, 2021.

Melanie Petrunia
Member, Appeal Division