



Citation: *IP v Canada Employment Insurance Commission*, 2022 SST 786

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: I. P.

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

Decision under appeal: General Division decision dated January 31, 2022
(GE-22-17)

Tribunal member: Jude Samson

Type of hearing: Teleconference

Hearing date: July 13, 2022

Hearing participants: Appellant
Respondent's representative

Decision date: August 19, 2022

File number: AD-22-148

Decision

[1] I. P. is the Claimant in this case. I'm dismissing his appeal. As a result, he has to reimburse benefits that were overpaid to him.

Overview

[2] Around the time of the COVID-19 pandemic, the Claimant received emergency response benefits followed by Employment Insurance (EI) regular benefits. The transition from one benefit to the other occurred in October 2020.

[3] Around the same time, the Claimant contacted the Canada Employment Insurance Commission (Commission) to report that he was starting to receive two monthly pensions, although he didn't know the precise amounts.

[4] Unfortunately, it took the Commission about a year to process this information, gather the amount of the Claimant's pensions, and apply that amount against his claim for EI benefits. During that year, the Commission paid the Claimant the full amount of his EI benefits. So, once the Commission allocated the Claimant's pensions (applied them against the amount of his EI benefits), it concluded that the Claimant was overpaid by a very large amount.

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division. It dismissed his appeal saying that the Commission had properly allocated the Claimant's pensions. The General Division also found that it couldn't reduce the Claimant's debt based on any misinformation that the Commission might have provided to him.

[6] The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division. I've concluded that the Commission overlooked an important issue. However, I agree with the conclusion it reached. As a result, I'm dismissing the Claimant's appeal.

Issues

[7] I'll consider the following issues in this decision:

- a) Did the General Division overlook an important issue by failing to consider whether the Commission exercised its discretion judicially when it decided to reconsider the Claimant's benefits in October 2021?
- b) If so, how should I fix the General Division's error?
- c) Did the Commission exercise its discretion judicially in this case?

Analysis

[8] I can intervene in this case only if the General Division made a relevant error.¹ In this appeal, my focus is on whether the General Division overlooked a relevant issue. Any jurisdictional error can allow me to intervene in this case.

The General Division overlooked an important issue

[9] Respectfully, the General Division overlooked one of the Claimant's main arguments.

[10] While this case arose because the Commission allocated the Claimant's pension income against his claim for EI benefits, it's important to recognize the Claimant's main argument.

[11] The Claimant hasn't argued that pension income shouldn't be applied against a claim for EI benefits. Nor has he argued that the Commission made errors when calculating his new benefit rate. Similarly, the Commission hasn't argued that the Claimant tried to hide his pension income or that he should have done more to report it.

[12] Instead, I understand the Claimant to be arguing that the Commission shouldn't have reconsidered his claim because it failed to process the information about his

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).

pension income in a timely way. To borrow his words, he shouldn't be held responsible for the Commission's mistakes.

[13] The law says that the Commission "may" reconsider a claim for benefits within certain timeframes.² This means that the Commission has the discretion to reconsider a claim or not. The Commission has a lot of latitude when exercising discretionary powers. However, it must still act "judicially." The Commission has a reconsideration policy that guides its use of this discretionary power.³

[14] The Tribunal can review the Commission's discretionary decisions to make sure that they were made judicially. However, the General Division never mentioned anything about this in its decision.

[15] The Commission argues that the General Division implicitly found that the Commission had exercised its discretionary powers judicially. According to the Commission, that's all the General Division needed to do.

[16] I disagree. This was the Claimant's main argument. As a result, the General Division should have dealt with the issue head on.⁴

[17] In the circumstances, the General Division overlooked an important issue by failing to consider whether the Commission exercised its discretion judicially when it reconsidered the Claimant's benefits in October 2021.

² Section 52 of the *Employment Insurance Act* (EI Act) allows the Commission to reconsider a claim for benefits on its own initiative. This is different from a reconsideration under section 112 of the EI Act, which a claimant or employer must request.

³ The Commission's policy is in chapter 17 of the *Digest of Benefit Entitlement Principles*.

⁴ The Supreme Court of Canada has said that decisions need to respond to the main issues and concerns raised by the parties: see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 127–128.

I will fix the General Division's error by giving the decision it should have given

[18] At the hearing before me, both parties argued that, if the General Division made an error, then I should give the decision the General Division should have given.⁵ In particular, the Claimant didn't want more delays.

[19] I agree. This means that I can decide whether the Commission exercised its discretionary powers judicially.

The Commission exercised its discretionary powers judicially

[20] As mentioned above, the Commission has to act judicially when using its discretionary powers. For example, the Commission's discretionary decisions can be set aside if it:⁶

- acts in bad faith, in a discriminatory manner, or for an improper purpose;
- considers irrelevant factors; or
- ignores relevant factors.

[21] Here, the Claimant's main allegation is that the Commission failed to process information about his pensions for about a year. The Commission didn't make a mistake in the sense of entering the wrong information into its systems. It simply took a very long time to gather the relevant information and to make the necessary calculations.

[22] While the delay is long, it's only fair to recognize that the Claimant provided this information to the Commission in the middle of the COVID-19 pandemic, which placed significant demands on the Commission.⁷

⁵ Sections 59(1) and 64(1) of the DESD Act give me the power to fix the General Division's errors in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paragraphs 16–18.

⁶ See, for example, *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

⁷ On September 16, 2020, the Commission wrote to the Claimant to say that he would be transitioning from the Emergency Response Benefit to EI regular benefits: see page GD3-15. Legislative amendments at the time meant that many others went through a similar transition.

[23] The Claimant's allegations do not, in my view, rise to the level required to suggest that the Commission acted in bad faith, in a discriminatory manner, or for an improper purpose.

[24] In terms of relevant factors, I recognize that the Commission has a broad power to recover overpayments and that it can normally reconsider a claim within three years of when benefits were paid.⁸

[25] In my leave to appeal decision, I also mentioned how some General Division decisions have found that the Commission's reconsideration policy is a relevant factor that needs considering.⁹ This is different, in my view, from the Commission's concern about the policy being given the force of law, or otherwise being used to override the Commission's discretion.¹⁰

[26] Though not binding, I do find that the Commission's decision to reconsider the Claimant's case was consistent with its policy. Specifically, the policy says that it will reconsider a claim when a person ought to have known that they weren't entitled to the benefits received.¹¹

[27] Here, the Claimant reported the pension income and admitted speaking to the Commission about it several times. In other words, he knew or ought to have known that a recalculation of his benefit rate would be required but that it had not yet happened. In fact, the Claimant didn't provide the Commission with the amount of his pensions until October 6, 2021, and the recalculation was done the next day.¹²

⁸ See section 52 of the EI Act and the Federal Court of Appeal's decision in *Lanuza v Canada (Attorney General)*, 2005 FCA 324.

⁹ See, chapter 17.3 of the *Digest of Benefit Entitlement Principles*, along with decisions like *MD and JD v Canada Employment Insurance Commission*, 2020 SST 1163, *JP v Canada Employment Insurance Commission*, 2021 SST 109; *SL v Canada Employment Insurance Commission*, 2021 SST 889.

¹⁰ In support of this argument, the Commission relies on decisions like *Canada RNA Biochemical Inc v Canada (Health)*, 2020 FC 668, *Thamotharem v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 298, *Maple Lodge Farms v Government of Canada*, 1982 CanLII 24 (SCC), and *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299.

¹¹ See section 17.3.3 of the *Digest of Benefit Entitlement Principles*.

¹² See pages GD3-20 to GD3-23.

[28] In all the circumstances, the Claimant hasn't shown that the Commission failed to act judicially when deciding to reconsider his benefits in October 2021.

[29] I sympathize with the Claimant's situation. It could have been avoided. Instead, the Commission's delays allowed a small problem to balloon into a big one.

[30] If he hasn't already done so, I understand that the Claimant might be able to contact the Canada Revenue Agency to ask if some or all of his debt could be written off (cancelled) because paying it back would be a serious hardship for him.¹³ I hope the Commission would seriously consider any request of that type. Alternatively, the Claimant and the Canada Revenue Agency might be able to agree on a repayment plan.

Conclusion

[31] I concluded that the General Division overlooked an important issue in this case. However, I found that the Commission acted judicially when reconsidering the Claimant's benefits. As a result, I'm dismissing his appeal.

Jude Samson
Member, Appeal Division

¹³ See section 56 of the *Employment Insurance Regulations*. The Canada Revenue Agency's Debt Management Call Centre can be reached at 1-866-864-5823.