



[TRANSLATION]

Citation: *Canada Employment Insurance Commission v GJ*, 2022 SST 1467

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Anick Dumoulin
Respondent: G. J.

Decision under appeal: General Division decision dated
September 16, 2022 (GE-22-1289)

Tribunal member: Pierre Lafontaine
Type of hearing: Teleconference
Hearing date: November 29, 2022
Hearing participant: Appellant's representative
Decision date: December 9, 2022
File number: AD-22-700

Decision

[1] The appeal is allowed.

Overview

[2] The Respondent (Claimant) has received a Quebec retirement pension (pension) since November 2019. On December 31, 2020, the Claimant made an initial claim for Employment Insurance (EI) benefits. A benefit period was established effective December 27, 2020. The Claimant started receiving a pension supplement of \$2.36 per month on January 1, 2021.

[3] On January 19, 2022, the Appellant (Commission) verbally notified the Claimant that the pension supplement was earnings that needed to be allocated or deducted from his benefits as of January 3, 2021. The allocation created an overpayment of benefits.

[4] After the Claimant asked it to reconsider, the Commission changed its initial decision. It decided that an amount of \$0.54 (rounded up to \$1.00) had to be applied against his weekly benefits from January 3, 2021, to the end of his claim for benefits.

[5] The Claimant appealed the Commission's reconsideration decision to the General Division.

[6] The General Division found that the pension was earnings to be applied against the benefits. It found that the Commission had correctly determined the allocation period. But, it found that the Commission had not correctly determined the amount to be allocated to each week of the Claimant's benefit period. The General Division decided that the allocation of his earnings showed that there was no overpayment of benefits.

[7] The Appeal Division granted the Commission leave to appeal the General Division decision. The Commission argues that the General Division made an error in its interpretation of the law because it did not take into account the Claimant's entire income and because the amount it rounded off was not the final result of the calculation, that is, the amount to be deducted each week.

[8] I have to decide whether the General Division made an error of law in calculating the amount to be allocated to each week of the Claimant's benefit period.

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

Preliminary remarks

[10] The Claimant was not at the hearing. Because I was satisfied that he had received notice of the hearing, I proceeded to hear the appeal in his absence.¹

Issue

[11] Did the General Division make an error of law in calculating the amount to be allocated to each week of the Claimant's benefit period?

Analysis

Appeal Division's mandate

[12] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.²

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

[14] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or 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 See section 12(1) of the *Social Security Tribunal Regulations*.

² *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

Did the General Division make an error of law in calculating the amount to be allocated to each week of the Claimant's benefit period?

[15] The Commission argues that the General Division confirmed that the Claimant received a pension supplement of \$2.36 per month and that it was earnings that needed to be allocated as of January 3, 2021.

[16] The Commission argues that the General Division made an error of law in calculating the amount to be allocated to each week. It says that the General Division did not take into account the Claimant's entire income, as set out in section 35(2) of the *Employment Insurance Regulations* (EI Regulations). It says that, according to this section, the earnings to be taken into account for the purpose of determining the amount to be deducted from benefits are the Claimant's entire income, that is, \$2.36 per month.

[17] The Commission says that the rounding off described in section 36(20) is for the purposes of section 36 of the EI Regulations—in other words, for the amount to be allocated to each week. It says that the only amount to be rounded off is the final result of the calculation, that is, the amount to be deducted each week.

[18] The General Division determined that rounding the monthly amount of \$2.36 to the nearest dollar, meaning \$2.00, gave an annual amount of \$24.00 ($\$2.00 \times 12 = \24.00), which amounted to \$0.46 per week ($\$24.00 \div 52 = \0.4615).

[19] The General Division determined that the \$0.46 had to be rounded to the nearest dollar too. Since a fraction that is less than one half has to be disregarded, the amount became \$0.00. The General Division decided that the allocation of the Claimant's earnings showed that there was no overpayment of benefits.

[20] Section 35(2) of the EI Regulations says that the earnings to be taken into account for the purpose of determining the amount to be deducted from benefits payable under section 19 of the *Employment Insurance Act* are the **entire income** of a claimant arising out of any employment. The earnings are then allocated to a given number of weeks in the manner described in section 36 of the EI Regulations.

[21] Section 36(20) of the EI Regulations says that, for **amounts of money to be allocated**, a fraction of a dollar that is equal to or greater than one half shall be taken as a dollar and a fraction that is less than one half shall be disregarded.³

[22] Because of this, I find that the General Division made an error of law in its interpretation of sections 35(2) and 36(20) of the EI Regulations.

Remedy

[23] Considering that both parties had the opportunity to present their case before the General Division, I will give the decision that the General Division should have given.⁴

[24] The Claimant's pension went from \$660.18 per month to \$662.54 per month because of a retirement pension supplement. This means that the pension supplement is \$2.36 per month, which amounts to \$0.54 per week ($\$2.36 \times 12 \text{ months} \div 52 \text{ weeks}$). That amount has to be rounded up to \$1 and allocated as of January 3, 2021.

Conclusion

[25] The appeal is allowed.

Pierre Lafontaine
Member, Appeal Division

³ The French version of section 36(20) of the *Employment Insurance Regulations* confirms this interpretation: "Pour l'application du présent article, les sommes visées sont arrondies au dollar supérieur si elles comportent une fraction d'un dollar égale ou supérieure à 50 cents et au dollar inférieur si elles comportent une fraction moindre." See also *DB v Canada Employment Insurance Commission*, 2020 SST 1113, affirmed by the Appeal Division.

⁴ In accordance with the Appeal Division's powers under section 59(1) of the *Department of Employment and Social Development Act*.