



Citation: *FR v Canada Employment Insurance Commission*, 2022 SST 1480

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: F. R.
Representative: F. P.

Respondent: Canada Employment Insurance Commission
Representative: A. Fricker

Decision under appeal: General Division decision dated June 14, 2022
(GE-22-1114)

Tribunal member: Jude Samson

Type of hearing: Videoconference
Hearing date: October 25, 2022
Hearing participants: Appellant
Respondent's representative

Decision date: December 14, 2022
File number: AD-22-407

Decision

[1] F. R. is the Claimant in this appeal. I'm allowing her appeal in part and reducing her debt to \$2,000.

Overview

[2] The Claimant received different Employment Insurance (EI) benefits: emergency response benefits and so-called regular benefits. For various reasons, the Canada Employment Insurance Commission (Commission) made changes to her account. According to the Commission, these changes affected the amount of benefits to which the Claimant was entitled. Overall, the Commission concluded that it had overpaid the Claimant's benefits by nearly \$12,000.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division but it didn't consider the main issues in her appeal. Instead, the General Division concluded that the appeal was five days late and that it was bound to fail. So, the General Division refused to give the Claimant extra time to file her appeal.

[4] Now, the Claimant is appealing the General Division decision to the Tribunal's Appeal Division. The Commission acknowledges that there are errors in the General Division decision and says that I should give the decision the General Division should have given. However, the Commission maintains that it overpaid the Claimant's emergency response benefits by \$2,000. I agree.

Issues

[5] The issues in this appeal are:

- a) Did the General Division make an error of law when it concluded that the Claimant's appeal was bound to fail?
- b) If so, how should I fix the General Division's error?
- c) Did the Commission overpay the Claimant's emergency response benefits?

Analysis

[6] I can intervene in this case if there's an error of law in the General Division decision.¹

The General Division made an error of law when it concluded that the Claimant's appeal was bound to fail

[7] Because the Claimant's appeal was late, the General Division had to decide whether it would give her more time to file her appeal. As part of that decision, the General Division concluded that the Claimant had no arguable case on appeal. In other words, her appeal was bound to fail.

[8] Specifically, the General Division decided that the Claimant's appeal was about her entitlement to regular benefits versus emergency response benefits, along with her benefit rate. However, the General Division saw no problems with the Commission's decision on these points.

[9] On the contrary, the Commission now accepts that it made an error by antedating (backdating) the Claimant's claim for regular benefits to August 15, 2020. To backdate a person's claim, they have to be eligible to receive benefits on the earlier date.² However, the law prohibited the Commission from establishing a benefit period for regular benefits in August 2020.³

[10] This issue affects the Claimant's benefit rate, along with the number of weeks that she's entitled to one benefit versus the other. The General Division overlooked these parts of the law when deciding that the Claimant's appeal was bound to fail. So, it made an error of law.

¹ The errors I can consider, also known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

² See section 10(4) of the *Employment Insurance Act* (EI Act).

³ See section 153.8 of the EI Act.

I will give the decision the General Division should have given

[11] The parties agree that I should give the decision the General Division should have given.⁴

[12] I agree. The Commission made an important concession and the facts of this case are not especially complex or controversial.

– I am giving the Claimant an extension of time to appeal

[13] The Claimant hasn't disputed that her appeal was late. However, the Commission accepts that the Tribunal should give her extra time to file her appeal.

[14] For the following reasons, I agree:

- The Claimant has an arguable case on appeal.
- Giving the Claimant more time to appeal will not prejudice the Commission.
- Overall, the interests of justice favour giving the Claimant more time to appeal.⁵

– The Claimant's entitlement to EI emergency response benefits and regular benefits

[15] The Claimant filed an application for benefits on November 30, 2020.⁶ She later asked, and the Commission agreed, to backdate her application to August 14, 2020.

[16] In light of those dates, the Commission recognizes that it should have considered that the Claimant was applying for emergency response benefits.⁷ The Claimant was

⁴ Sections 59(1) and 64(1) of the DESD Act give me the power to fix the General Division's error in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paragraphs 16–18.

⁵ In *Canada (Attorney General) v Larkman*, 2012 FCA 204, the Federal Court of Appeal said that the interests of justice are an overriding consideration.

⁶ This application starts on page GD3-53.

⁷ See section 153.8 of the EI Act.

entitled to emergency response benefits until October 3, 2020, at a rate of \$500 per week.⁸ The emergency response benefit program ended on October 4, 2020.

[17] The Commission also acknowledges that it should have then established the Claimant's claim for EI regular benefits, effective October 4, 2020. Under this scenario, the Claimant benefits from temporary measures designed to ease the transition from emergency response benefits to regular benefits. In particular, the Claimant was entitled to receive up to 50 weeks of benefits paid at \$500 per week.⁹

[18] Together, these changes mean that the Claimant's overpayment (or debt) is reduced by \$9,970.¹⁰

The Commission overpaid the Claimant's emergency response benefits

[19] Nevertheless, the Commission maintains that it overpaid the Claimant's emergency response benefits by \$2,000.

[20] The Commission made a \$2,000 advance payment to most people claiming emergency response benefits. In some cases, the Commission was able to recover that amount by withholding later payments, but that didn't happen in this case.

[21] Here, the Claimant applied for emergency response benefits over eight weeks, from March 15 to May 9, 2020, and the Commission paid her \$500 for each of those weeks.¹¹ In addition, it paid her the \$2,000 advance payment.¹² This is equivalent to 12 weeks of emergency response benefits.

[22] The Claimant had to apply for emergency response benefits every two weeks.¹³ However, she has not pointed to any applications that went unpaid. Instead, the

⁸ See sections 153.10(1) and 153.11 of the EI Act.

⁹ See sections 12(2.1) and 153.192 of the EI Act.

¹⁰ The Claimant received two notices of debt: one for \$2,845 (page GD3-84) and another for \$7,125 (page GD3-88).

¹¹ See pages GD3-28 to GD3-49.

¹² See page GD3-26.

¹³ See sections 153.7 and 153.8 of the EI Act.

Commission has shown that, between March 15 and August 16, 2020, it paid her 12 weeks of emergency response benefits, although she was only entitled to eight.

[23] The Claimant argued that she shouldn't have to repay any benefits because she did nothing wrong.

[24] Nobody is saying that the Claimant received benefits fraudulently. The Commission is simply trying to recover benefits that it paid to the Claimant in advance. The law allows this.¹⁴

[25] The Claimant also suggested that the Commission might have already recovered the \$2,000 overpayment from her taxes. I do not have access to the Commission's records. However, it goes without saying that it can only recover the Claimant's debt once. The Claimant can request further clarification from the Commission if this remains an issue.

Conclusion

[26] The General Division overlooked relevant parts of the law when it concluded that the Claimant's appeal was bound to fail. The General Division's error allows me to intervene in this case.

[27] I'm allowing the Claimant's appeal in part and giving the decision the General Division should have given: the Commission overpaid the Claimant's emergency response benefits by \$2,000. Additional amounts claimed by the Commission are cancelled. As discussed during the hearing, the Claimant can contact the Canada Revenue Agency if she's struggling to pay her debt.¹⁵

Jude Samson
Member, Appeal Division

¹⁴ See sections 43, 44, 153.6, 153.7(1.1), and 153.1301 of the EI Act.

¹⁵ Section 153.1306 of the EI Act allows some debts to be written off. The Canada Revenue Agency's Debt Management Call Centre can be reached at 1-866-864-5823.