



[TRANSLATION]

Citation: *FD v Canada Employment Insurance Commission*, 2023 SST 91

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: F. D.

Respondent: Canada Employment Insurance Commission
Representative: Julie Meilleur

Decision under appeal: General Division decision dated
August 9, 2022 (GE-22-1384)

Tribunal member: Jude Samson

Type of hearing: Videoconference
Hearing date: January 30, 2023
Hearing participants: Appellant
Respondent's representative

Decision date: January 31, 2023
File number: AD-22-652

Decision

[1] The appeal is allowed in part. I understand that this decision will reduce the Claimant's debt from \$2,500 to \$500.

Overview

[2] F. D. is the Claimant in this case. She applied for Employment Insurance (EI) regular benefits, and the Canada Employment Insurance Commission (Commission) paid her those benefits.

[3] The Claimant was outside Canada from July 2, 2021, to August 7, 2021. After returning to Canada, she discussed her situation with a Service Canada agent. She says he confirmed that she was entitled to benefits for the period she was absent.

[4] So, she claimed benefits for that period, and the Commission paid her those benefits.

[5] Later, the Claimant was surprised to learn that the Commission wanted her to pay the money back. She was unhappy that the Commission had reconsidered her file when it had all the information about her period of absence from the beginning.

The parties agree on the outcome of the appeal

[6] At the hearing, the parties reached an agreement that I summarize as follows:

- a) The General Division made an error of jurisdiction by failing to consider whether the Commission had judicially exercised its discretion to reconsider a claim for benefits.¹
- b) In the circumstances, I should allow the appeal and give the decision the General Division should have given.²

¹ This error allows me to intervene in this case. See section 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).

² This is one of the remedies set out in section 59(1) of the DESD Act.

- c) If the Commission had followed its reconsideration policy, it would not have created an overpayment on the Claimant's account for the period from July 11 to August 6, 2021.

I accept the proposed outcome

[7] The law says that the Commission “may” reconsider a claim for benefits within certain time frames.³ This means that the Commission has the discretion to reconsider a claim for benefits.

[8] The Commission has to exercise its discretion judicially. For example, a discretionary decision can be set aside if it can be shown that the Commission ignored a relevant factor.⁴

[9] The Commission has a reconsideration policy that guides the exercise of its discretion.⁵ The policy was developed to ensure a consistent and fair application of the law and to prevent creating debt when the person was overpaid through no fault of their own.

[10] The Claimant agrees that she isn't entitled to the benefits she received for the week of July 4 to 10, 2021. She says that she always intended to pay that money back.

[11] But the Commission had all the information about the Claimant's period of absence when one of its agents told her she was entitled to benefits and when it paid her benefits for the weeks from July 11 to August 6, 2021.

[12] I find that, when the Commission later exercised its discretion to reconsider the Claimant's claim for benefits, it ignored a relevant factor: its reconsideration policy. Because of this, I am setting aside its decision.

³ 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.

⁴ See *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

⁵ The Commission's policy is in chapter 17 of the *Digest of Benefit Entitlement Principles*.

[13] The Commission now agrees that it should not have created an overpayment for the weeks from July 11 to August 6, 2021. I understand that this decision will reduce the overpayment on the Claimant's account from \$2,500 to \$500.

[14] The Commission has already recovered more than that amount. So, it will break down the benefits and pay the Claimant what she is owed.

Conclusion

[15] Based on the information available to me, I am allowing the appeal in part in line with the settlement agreement outlined above.

[16] The Claimant wasn't entitled to the benefits she received for the week of July 4 to 10, 2021. But the Commission should not have created an overpayment on the Claimant's account for the weeks from July 11 to August 6, 2021. This decision will be sent to the Commission so that it can do the precise calculations needed for its proper implementation.

[17] I want to thank the parties for settling this appeal.

Jude Samson
Member, Appeal Division