



[TRANSLATION]

Citation: *DB v Canada Employment Insurance Commission*, 2023 SST 608

## Social Security Tribunal of Canada Appeal Division

# Decision

<b>Appellant:</b>	D. B.
<b>Representative:</b>	Alexis Pinneault
<b>Respondent:</b>	Canada Employment Insurance Commission
<b>Representative:</b>	Suzette Bernard

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<b>Decision under appeal:</b>	General Division decision dated October 7, 2020 (GE-20-1918)
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<b>Tribunal member:</b>	Jude Samson
<b>Type of hearing:</b>	Videoconference
<b>Hearing date:</b>	December 14, 2022
<b>Hearing participants:</b>	Appellant's representative Respondent's representative
<b>Decision date:</b>	May 19, 2023
<b>File number:</b>	AD-22-486

## Decision

[1] The appeal is dismissed. The General Division didn't make an error. This means that the Claimant, D. B., can't establish a benefit period in December 2019.

## Overview

[2] The Claimant has had the same seasonal job for several years. In her job, she uses a cell phone provided by her employer. She keeps this benefit after her job ends each year.

[3] In December 2019, the Claimant applied for Employment Insurance (EI) regular benefits with the Canada Employment Insurance Commission (Commission). The Commission paid her benefits.

[4] The Commission then reconsidered her claim. It found that the Claimant wasn't entitled to benefits because she hadn't been without work and earnings for at least seven consecutive days. Specifically, the Claimant had kept a benefit paid by her employer—the cell phone. This means that she didn't qualify for a benefit period.

[5] The Claimant appealed the Commission's decision to this Tribunal's General Division, but it dismissed her appeal.

[6] The Claimant is now appealing the General Division decision to the Appeal Division. She says that the General Division failed to apply the rule of issue estoppel (in other words, once decided, the issue can't be decided again).

[7] The Claimant argues that the Commission decided the cell phone issue in her favour in 2016, and it did so definitively. As a result, the General Division should not have accepted an opposite conclusion.

[8] I find that the General Division didn't make an error by failing to apply the rule of estoppel. So, I am dismissing the appeal.

## Preliminary issue: new evidence

[9] At the hearing, the parties agreed that I should consider some new evidence that was general in nature:<sup>1</sup>

- information from the Commission's website<sup>2</sup>
- a cell phone bill from the Claimant<sup>3</sup>

[10] The information from the Commission's website supports the Claimant's arguments about the fairness and rigour of the Commission's reconsideration process. The cell phone bill supports the Commission's argument that the cell phone was used for personal use.

[11] For the same reason, I also reviewed some of the Commission's letters to the Claimant from 2016.<sup>4</sup> They put the earlier decision in context.

[12] However, I didn't look at the Claimant's statement of account, which shows the Claimant's debt to the EI program.<sup>5</sup> This statement includes amounts that go beyond the specific issue in this case.

## Issue

[13] My decision focuses on whether the General Division made an error of law by failing to apply the rule of issue estoppel.

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<sup>1</sup> This is an exception to the general rule that normally prevents me from considering new evidence: See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paras 36-39; and *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20.

<sup>2</sup> See AD10-68 to AD10-71.

<sup>3</sup> See AD12-4.

<sup>4</sup> See AD1-16 to AD1-20.

<sup>5</sup> See AD10-65 and AD10-66.

## Analysis

### The General Division didn't make an error of law

[14] The rule of issue estoppel doesn't apply in this case. So, the General Division didn't make an error by failing to apply it.

#### – The 2016 decision and the classification of the cell phone

[15] In January 2016, the Commission asked the Claimant to attend an interview to get the information necessary to determine her entitlement to EI benefits.<sup>6</sup> After the interview, the Commission made the following decision:

- The Claimant's cell phone is a personal benefit that can be considered earnings.
- So, the Claimant didn't have an interruption of earnings and wasn't entitled to the EI benefits she had received during her benefit period.<sup>7</sup>

[16] The Claimant asked the Commission to reconsider its initial decision. On April 21, 2016, after this reconsideration, the Commission decided the issue in the Claimant's favour and cancelled its initial decision.<sup>8</sup>

[17] So, the Claimant argues that the cell phone issue, and how it affected her entitlement to EI benefits, was definitively settled by the Commission in 2016. As a result, the rule of estoppel prevented the Commission—and the General Division—from coming back to this issue.

#### – The rule of estoppel favours the finality of certain decisions

[18] The Supreme Court of Canada has set out the reasons for the rule of estoppel as follows:

An issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner. A

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<sup>6</sup> See letter starting at AD1-16.

<sup>7</sup> See letter starting at AD1-18.

<sup>8</sup> See GD7-2.

person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided.<sup>9</sup>

[19] The rule of estoppel is a doctrine of public policy. It can apply to a cause and to the various constituent issues or material facts related to that cause.<sup>10</sup>

[20] A person invoking the rule of issue estoppel must establish that the following conditions are met:

- the same question has already been decided
- the judicial decision which is said to create the estoppel was final
- the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies<sup>11</sup>

– **The rule of estoppel can't prevent the Commission from performing its statutory duties**

[21] To date, the courts haven't recognized that the rule of estoppel applies to decisions made by the Commission after a reconsideration request.<sup>12</sup>

[22] However, the Claimant argues that case law recognizes the judicial nature of decisions made in contexts similar to this one. For example, the principle of *res judicata* may apply to decisions made by the Minister under the *Canada Pension Plan*.<sup>13</sup>

[23] In my view, a single claim for a disability pension can't be equated with the many claims needed to receive EI benefits.

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<sup>9</sup> See *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44 at para 18.

<sup>10</sup> See *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44 at paras 19 and 20.

<sup>11</sup> This is a summary of the criteria set out in *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44 at para 25.

<sup>12</sup> The Supreme Court of British Columbia reached the opposite conclusion in *Read v Rimex Supply Ltd.*, 2021 BCSC 2157 at para 45. However, I am not bound by that decision.

<sup>13</sup> See, for example, *Canada (Minister of Human Resources Development) v MacDonald*, 2002 FCA 48; and *Vuong v Canada (Attorney General)*, 2007 FC 699.

[24] However, another important principle emerges from these decisions. In particular, case law says that the rule of estoppel can't override the ability of decision-makers to perform their statutory duties. Rothstein J.A. set out this proposition as follows:

We agree with the Minister that the doctrine of *res judicata* applies to decisions of the Minister, Review Tribunal and Pension Appeals Board under the *Canada Pension Plan*, subject to statutory provisions to the contrary, including subsection 84(2) of the Act providing for reconsideration based on new facts [emphasis added].<sup>14</sup>

[25] It follows that I must consider the extent of the Commission's statutory functions.

– **The law gives the Commission the responsibility to decide whether a person qualifies for benefits and to reconsider a decision**

[26] A person who wants to receive EI benefits must first apply.<sup>15</sup> They also have to prove that they qualify for benefits.

[27] For each claim, it is up to the Commission to decide whether that person is entitled to benefits and to pay them.<sup>16</sup>

[28] The Commission has to determine whether the person has had an interruption of earnings from employment, which is one of the conditions to qualify for benefits.<sup>17</sup>

[29] Even after the Commission has made a decision about entitlement to EI benefits, the law gives it the power to reconsider the claim retroactively.<sup>18</sup> In addition, the Commission may rescind or amend a decision in the following situations:

- It becomes aware of new facts.
- It made its decision without knowledge of a material fact.

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<sup>14</sup> See *Canada (Minister of Human Resources Development) v MacDonald*, 2002 FCA 48 at para 2; *Vuong v Canada (Attorney General)*, 2007 FC 699 at para 28.

<sup>15</sup> See section 48(1) of the *Employment Insurance Act* (Act).

<sup>16</sup> See section 48(3) of the Act.

<sup>17</sup> See section 7(2)(a) of the Act and section 14 of the *Employment Insurance Regulations*.

<sup>18</sup> See section 52 of the Act.

- It made its decision based on an important mistake about a material fact.<sup>19</sup>

[30] The Commission exercises these broad powers as part of its mandate to financially manage the EI program and maintain its integrity so that only those who are entitled to benefits receive them.<sup>20</sup>

– **In this situation, the Commission performed its statutory duties**

[31] The Claimant isn't asking whether keeping a cell phone after a job ends is earnings under the Act. Instead, she argues that, **in her case**, the 2016 decision and the rule of estoppel prevented the Commission and the General Division from finding that the continued use of the cell phone was an obstacle to establishing a benefit period.

[32] I don't accept the Claimant's argument.

[33] The law gives the Commission the important role of determining whether a claimant is entitled to the benefits they have claimed. In addition, the law gives the Commission the power to retroactively reconsider a claim and to change an earlier decision. These functions are performed **for each claim for benefits**.

[34] In this situation, I find that the Commission exercised its statutory reconsideration functions. The rule of estoppel can't prevent the Commission from making the verifications that the law permits and that are necessary to maintain the integrity of the program. It is up to the Commission to ensure that, for each claim for benefits, the person is entitled to the benefits claimed.

[35] Viewed from a different perspective, the Commission's power to reconsider a claim and to change a decision means that its decisions can't be considered final, especially when it comes to a different claim and benefit period.

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<sup>19</sup> See section 111 of the Act.

<sup>20</sup> See, for example, sections 43, 44, 47, and 52 of the Act.

[36] As a result, the Commission's reconsideration decisions don't meet the conditions for applying the rule of issue estoppel.

## **Conclusion**

[37] The General Division didn't make an error by failing to apply the rule of issue estoppel. The rule doesn't apply in this situation.

[38] So, I am dismissing the Claimant's appeal.

Jude Samson  
Member, Appeal Division