



Citation: *Canada Employment Insurance Commission v ZN*, 2023 SST 607

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Dani Grandmaître

**Respondent:** Z. N.

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**Decision under appeal:** General Division decision dated December 15, 2022  
(GE-22-3392)

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**Tribunal member:** Shirley Netten

**Type of hearing:** In Writing

**Decision date:** May 17, 2023

**File number:** AD-23-15

## Decision

[1] The appeal is allowed. The General Division made an error of law. The General Division decision is rescinded (cancelled). The Claimant, Z. N., was entitled to regular employment insurance (EI) benefits.

## Overview

[2] The Claimant applied for regular EI benefits on March 30, 2020. He received \$5,500 in EI Emergency Response Benefits (EI-ERB). In October 2021, Service Canada<sup>1</sup> said he was only entitled to \$3,500 in EI-ERB, and asked him to pay back the extra \$2,000. On reconsideration, Service Canada said that he was entitled to \$4,000 in EI-ERB and must repay \$1,500.

[3] The Claimant appealed. This Tribunal's General Division said that the Claimant could not get regular EI benefits instead of the EI-ERB. The General Division also decided that the Claimant was entitled to \$4,500 in EI-ERB, reducing his overpayment to \$1,000.

[4] The Canada Employment Insurance Commission (Commission) appealed to the Appeal Division. The Commission said that the General Division made legal errors when deciding the entitlement to EI-ERB.

[5] The parties participated in a case conference, followed by a settlement conference. They now agree that the General Division made a different error, and that the Claimant was entitled to regular EI benefits.

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<sup>1</sup> On behalf of the Canada Employment Insurance Commission

## The parties agree on the outcome of the appeal

[6] The parties agree that:

- the General Division made an error of law when it said that the Claimant couldn't get regular benefits because he applied after March 15, 2020;
- the General Division decision should be rescinded; and
- the Claimant was entitled to regular EI benefits, with a benefit period starting March 8, 2020, and with benefits payable for eight weeks from March 15 to May 9, 2020.<sup>2</sup>

### I accept the proposed outcome

[7] The General Division made an error of law. The law says that no **benefit period** for regular EI benefits can be established between March 15 and September 26, 2020; it doesn't say that no **claim** for regular benefits can be made during this period.<sup>3</sup> The General Division accepted that the Claimant had stopped work on March 9, 2020. But, because the General Division misunderstood the law, it failed to consider whether he could establish a benefit period for regular benefits **prior to** March 15, 2020.

[8] This error allows the Appeal Division to substitute its decision for the General Division's decision.<sup>4</sup>

[9] The Claimant applied for regular EI benefits within a reasonably prompt period (approximately three weeks) after his interruption of earnings. So, I accept the parties'

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<sup>2</sup> The Commission has also confirmed for the Claimant that these benefits will be paid at the rate of \$573 per week, for a total of \$4,584 in regular EI benefits. This means that, since he received \$5,500, he was overpaid by \$916. This is the amount the Commission says he would have to pay back, subject to any payments already made on his account.

<sup>3</sup> See section 153.8(5) of the *Employment Insurance Act*.

<sup>4</sup> See sections 58(1)(b) and 59 of the *Department of Employment and Social Development Act*.

agreement that the Claimant could establish a benefit period beginning March 8, 2020.<sup>5</sup> After a one-week waiting period, the Claimant was entitled to eight weeks of benefits, from March 15 to May 9, 2020. He returned to work the week of May 10, 2020.

[10] I am also rescinding the General Division decision: I have overturned the conclusion that the Claimant could not receive regular EI benefits, and the balance of the decision (about the calculation of his EI-ERB) is therefore unnecessary. I have not considered if the General Division made any other errors.

## Conclusion

[11] The appeal is allowed. The General Division made an error of law.

[12] The General Division decision is rescinded. The Claimant established a benefit period for regular EI benefits effective March 8, 2020. He was entitled to payment of regular EI benefits for eight weeks, from March 15 to May 9, 2020, instead of the EI-ERB.

Shirley Netten  
Member, Appeal Division

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<sup>5</sup> Claims can be backdated under section 10(4) of the *Employment Insurance Act* if there is good cause for the delay. “Good cause” includes taking reasonably prompt steps to determine one’s entitlement to benefits (see, for example, *Canada (Attorney General) v Mendoza*, 2021 FCA 36.) The Commission has also said, as a matter of policy, that it is appropriate to backdate claims filed within four weeks (see Chapter 3.1.1 of the Commission’s *Digest of Benefit Entitlement Principles*).