



Citation: *Canada Employment Insurance Commission v LC*, 2023 SST 1168

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Joshua Toews

Respondent: L. C.

Decision under appeal: General Division decision dated January 31, 2023
(GE-22-3446)

Tribunal member: Melanie Petrunia

Type of hearing: Teleconference

Hearing date: June 15, 2023

Hearing participants: Appellant's representative
Respondent

Decision date: August 27, 2023

File number: AD-23-223

Decision

[1] The appeal is allowed. The General Division made an error of law. I have made the decision that the General Division should have made and find that the Claimant is liable for an overpayment in the amount of \$2,000.

Overview

[2] The Respondent, L. C. (Claimant) applied for employment insurance (EI) regular benefits on April 3, 2020. Because of amendments to the *Employment Insurance Act* (EI Act), the Claimant received the Emergency Relief Benefit (ERB).

[3] The Claimant received an advance of \$2,000 of ERB, equivalent to four weeks of benefits. The Commission intended to withhold four weeks of benefits later in his benefit period to recover the advance. The Claimant did not collect the ERB for long enough for the amount to be recovered which the Commission said resulted in an overpayment of \$2,000.

[4] The Claimant disagreed that he had an overpayment and appealed this decision to the Tribunal's General Division. The General Division dismissed the appeal with modification. It decided that the Claimant had to repay \$1,500 because he received three weeks of ERB payments to which he was not entitled.

[5] The Commission is now appealing the General Division decision to the Appeal Division. It argues that the General Division made errors of law.

[6] The General Division misinterpreted the legislation when it decided that the Claimant was entitled to more weeks of benefits than the Commission had determined. The General Division failed to consider the Claimant's eligibility in two-week periods.

[7] I have made the decision that the General Division should have made and find that the Claimant is liable for an overpayment in the amount of \$2000.

Issues

[8] The issues in this appeal are:

- a) Did the General Division make an error of law by misinterpreting the EI ERB eligibility provisions in the law?
- b) If so, what is the best way to fix the General Division's error?

Analysis

[9] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:¹

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

The General Division misapplied the legislation

[10] In its decision, the General Division found that the Claimant was laid off and applied for benefits on April 3, 2020. He returned to work on June 1, 2020.² The General Division found that the Claimant was entitled to benefits for the period from May 24, 2020 to June 6, 2020.³ The Claimant was only paid benefits until May 30, 2020.

[11] The General Division found that the Claimant was paid 8 weeks of benefits plus the \$2,000 advance payment. Because it decided he was eligible for benefits for the period from May 24, 2020 to June 2020, it found that he was entitled to one more week

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

² General Division decision at para 22.

³ General Division decision at para 23.

of benefits than he had been paid and deducted this from the \$2,000 advance, resulting in an overpayment of \$1,500.

[12] The Commission argues that the General Division made an error of law in its decision. It says that the General Division failed to consider that eligibility is determined in two-week blocks and that the period from May 24, 2020 to June 6, 2020 was not a two-week block for the Claimant. It ignored the preceding three weeks. I agree with the Commission.

[13] The legislation says that the ERB is payable to a claimant who makes a claim under section 153.8 and who is eligible.⁴ Section 153.8 provides that a claimant makes a claim for any two-week period starting on a Sunday and falling within the period of March 15, 2020 to October 3, 2020.

[14] The Claimant was off work for 8 weeks. The Commission argues that the proper allocation of the two-week periods under subsection 153.9(1) is as follows:

WEEK	EARNINGS	HOURS WORKED	ERB PAID (WEEKLY)
April 5-11	\$0	0	\$500
April 12-18	\$0	0	\$500
April 19-25	\$0	0	\$500
April 26-May 2	\$0	0	\$500
May 3-9	\$0	0	\$500
May 10-16	\$0	0	\$500
May 17-23	\$0	0	\$500
May 24-30	\$0	0	\$500
May 31-June 6	Returned to full-time work		\$0

⁴ See section 153.7(1) of the *Employment Insurance Act* (EI Act).

[15] In its decision, the General Division considered April 19 to 25, 2020 as a one-week period.⁵ I find that this was an error of law.

Remedy

[16] At the hearing before me, both parties argued that, if the General Division made an error, then I should give the decision the General Division should have given.⁶

[17] I agree. I find that this is an appropriate case in which to substitute my own decision. The facts are not in dispute and the evidentiary record is sufficient to enable me to make a decision.

– **The Claimant was overpaid benefits in the amount of \$2,000**

[18] As discussed above, the Claimant was off work for 8 weeks. He applied for and received 8 weeks of ERB, in addition to the \$2,000 overpayment. The Claimant may have applied for and been paid one week of benefits for the week of April 19 to 25, 2020. However, I find that the Claimant's eligibility is properly determined in two-week periods.

[19] I find that the Claimant was not entitled to benefits for the week of May 31 to June 5, 2020. He returned to work on June 1, 2020. The Claimant's eligibility for the previous week was part of the two-week period of May 17 to May 30, 2020. The Claimant was not eligible for ERB for the two-week period from May 31 to June 12, 2020.

[20] The Claimant was overpaid benefits in the amount of \$2,000.

⁵ General Division decision at para 17.

⁶ Sections 59(1) and 64(1) of the DESD Act give me the power to fix the General Division's errors in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paras 16 to 18.

Conclusion

[21] The appeal is allowed. The General Division made an error of law. The Claimant was overpaid benefits in the amount of \$2,000.

Melanie Petrunia
Member, Appeal Division