



Citation: *ZL v Canada Employment Insurance Commission*, 2023 SST 1753

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Z. L.

Respondent: Canada Employment Insurance Commission
Representative: Julie Villeneuve

Decision under appeal: General Division decision dated July 18, 2023
(GE-22-4111)

Tribunal member: Stephen Bergen

Decision date: November 28, 2023

File number: AD-23-731

Decision

[1] I am allowing the appeal and rescinding the General Division decision. The General Division did not have jurisdiction to make the decision that it made.

Background

[2] Z. L. is the Appellant. I will call him the Claimant because he claimed Employment Insurance (EI) benefits. The Claimant received only partial benefits while he was on a work-share program. However, his employer never paid its portion, so the Claimant asked the Respondent, the Canada Employment Insurance Commission (Commission), to pay him full benefits for the time he was in the work-share program. He said that this period commenced on May 10, 2020.

[3] The Commission understood that the Claimant's November 2022 request was a request to reconsider a decision on October 29, 2020. It decided that the Claimant was out of time to request a reconsideration.

[4] The Claimant appealed this decision to the General Division of the Social Security Tribunal, which dismissed his appeal. It found that the Commission had exercised its discretion judicially, so it could not intervene.

[5] The Claimant appealed the General Division decision to the Appeal Division.

[6] I am allowing the appeal. The parties have agreed that the General Division made an error and that the appeal should be allowed, and I concur.

The parties agree on the outcome of the appeal

[7] The parties have asked for a decision based on the Commission's concession of October 31, 2023, accepted by the Claimant in writing on November 17, 2023.

[8] The parties agree that the General Division made an error of jurisdiction.

[9] They agree that the Commission has not decided whether to adjust the Claimant's benefits from May 10, 2020, and during the period when his work-share employer was supposed to have been subsidizing his benefits.

[10] They agree that the General Division made an error of jurisdiction by considering the appeal of the November 2022 decision that purported to be a reconsideration.

I accept the parties' agreement

[11] The General Division made an error of jurisdiction.¹

[12] It should not have considered the appeal of the Commission's refusal to reconsider, because it is only authorized to consider appeals from reconsideration decisions.² The decision appealed to the General Division was not a reconsideration decision because there had been no original decision for the Commission to "reconsider".³ The Commission had never made a decision that was responsive to the Claimant's request to adjust his benefits from May 10, 2020.

[13] Only reconsideration decisions (or refusals to reconsider) may be appealed to the General Division. The Commission had no jurisdiction to reconsider, or refuse to reconsider, a decision that had never been made. Therefore, the General Division had no jurisdiction to consider what purported to be a refusal to reconsider.

Conclusion

[14] The appeal is allowed. I am rescinding the General Division decision.⁴

[15] I have found that the Commission has never made an initial decision on whether the Claimant has any additional entitlement to benefits for the period beginning May 10, 2020, in which he was on a work-share program.

¹ This is one of the errors that I may consider. See section 58(1)(a) of the *Department of Employment and Social Development Act* (DESDA).

² See section 113 of the *Employment Insurance Act* (EI Act).

³ As required by section 112 of the EI Act.

⁴ My authority to rescind is found in section 59(1) of the DESDA.

[16] That means that the Claimant is free to ask the Commission for a decision now. If the Claimant disagrees with the Commission's decision, he may request a reconsideration (but should be mindful of the 30-day deadline).

Stephen Bergen
Member, Appeal Division