



Citation: *Canada Employment Insurance Commission v SB*, 2023 SST 1794

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Jordan Fine

Respondent: S. B.

Decision under appeal: General Division decision dated June 7, 2023
(GE-22-3929)

Tribunal member: Stephen Bergen

Type of hearing: In Writing
Decision date: December 12, 2023
File number: AD-23-686

Decision

[1] I am allowing the appeal in part. The Commission paid the Claimant benefits for a two-week period in which she was ineligible. This means she was overpaid by \$1000.00.

Overview

[2] S. B. is the Respondent in this appeal. She made a claim for the Employment Insurance Emergency Response Benefit (ERB), so I will call her the Claimant. Under the ERB program, claimants were entitled to a \$500.00 weekly benefit if they met the ERB eligibility requirements.

[3] The Appellant, the Canada Employment Insurance Commission (Commission), paid the Claimant the weekly ERB benefit from April 12, 2020, to October 3, 2020. It later declared an overpayment when it realized that she had worked in the week of August 2 to August 8, 2020, and in the week of August 9 to August 15, 2020. The Commission appears to have calculated the original overpayment based on what it described as “undeducted earnings” or “earnings other than declared.”¹

[4] When the Commission reconsidered, it changed its decision to say that the Claimant was not entitled to four weeks of benefits she received from August 2 to August 29, 2020. This means that she was overpaid four weeks at \$500 per week, or \$2000.00.

[5] The Claimant appealed to the General Division, which allowed her appeal. The General Division decided that the Claimant was eligible for all the benefits she received. It found that she was eligible for benefits in the two-week period beginning on July 17, 2020, and ending August 8, 2020, because she was unemployed for eight consecutive days. It also found that she was eligible for benefits in the two-week period

¹ See GD3-18.

beginning on August 9 and ending on August 22, 2020, because she was unemployed for seven consecutive days.

[6] The Commission appealed the General Division decision to the Appeal Division.

[7] I am allowing the appeal in part. The Claimant was eligible for benefits in the two-week period from July 19 to August 1, 2020, but ineligible for benefits from August 2 to August 15, 2020.

Issue

[8] The issues in this appeal are:

- a) Did the General Division make an error of law in how it applied the eligibility criteria?

Analysis

[9] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division made an error of law when making its decision.
- d) The General Division based its decision on an important error of fact.²

Error of law

[10] The Commission argued that the General Division misapplied the law (or made an error of fact).

[11] The law says that a claimant is eligible for the ERB benefits if they cease working for seven consecutive days within a two-week period for which they claimed the benefit.

² This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act (DESDA)*.

It also says that a claimant who does not meet this requirement may still be eligible for benefits within the claim period, if they earned less than \$1000.00 over four successive weeks.

[12] Following the lead of the Federal Court of Appeal,³ the Commission concedes that the EI Act does not create an income cap to disentitle a claimant who earns more than \$1000.00 over a four-week period.

[13] In this case, the Claimant earned more than \$1000.00 in the four weeks (that includes the two-week claim period in question). This means that the Claimant is not disentitled to benefits for all four weeks from July 19 to August 15, 2022, just because she earned more than \$1000.00 within those weeks. She would still be eligible for benefits if she had a claim period in which she had seven consecutive days without working or earning income.

[14] The Commission argues that the Claimant was not eligible for benefits in the two-week period from August 2 to August 15, 2020, because she did not have seven consecutive days without working or earning income. According to the Commission, the General Division made a factual and a legal error because it considered the eligibility requirements in the wrong two-week periods: It should have used two-week periods that were the claim periods, by which the Claimant was paid benefits.

[15] In the Claimant's submission, she argues that she should not have to repay the overpayment when it arose as a result of the Commission's mistake. She did not challenge the Commission's interpretation of the law.

[16] The General Division made an error of law.

[17] The law assesses a claimant's eligibility for ERB within the two-week periods in which they claimed the benefit.⁴ This has been consistently upheld by the Appeal

³ See *Canada (Procureur général) c Gagnon*, 2023 CAF 174 (French only).

⁴ See section 153.9(1)(iv) and (v) of the *Employment Insurance Act* (EI Act).

Division.⁵ The Claimant was paid benefits in two-week periods that began on April 12, 2020. Counting forward in two-week groups, it is apparent that August 2 to August 15, 2020, was one such claim period. The two weeks that run from July 17, 2020, and ending August 8, 2020, do not make up a claim period. Neither do the two weeks from August 9 to August 22, 2020.

[18] The General Division made an error of law by determining eligibility using two—week periods that were not claim periods.

Remedy

[19] I have found that the General Division made an error of law, so I must decide what I should do to fix it. I could return the matter to the General Division to reconsider. However, I also have the power to make the decision that the General Division should have made.⁶

[20] The Commission urges me to substitute my decision for that of the General Division. I agree. The record is complete and, once the law is applied correctly, the result is clear.

[21] The Claimant worked 32 hours from August 4 to August 7, 2020, and she worked 40 hours from August 10 to August 14, 2020. This means that she did not have a period of seven consecutive days in which she did not work or earn income, in the two-week claim period from August 2 to August 15, 2020. During that two-week period, the Claimant was ineligible for the \$500.00 weekly ERB benefit.

[22] The Claimant was overpaid two weeks of benefits, or \$1000.00.

[23] I appreciate that the Claimant believes this was the Commission's mistake, but that does not affect this appeal. The law permits the Commission to reconsider its own

⁵ See *Canada Employment Insurance Commission v HM* 2023 SST 831; See also *Canada Employment Insurance Commission v JE*, 2022 SST 201, *RG v Canada Employment Insurance Commission*, 2022 SST 1207, *SS v Canada Employment Insurance Commission*, 2022 SST 1459; *Canada Employment Insurance Commission v HG*, 2023 SST 355.

⁶ See section 59(1) and 64 of the DESDA.

decisions for at least three years.⁷ The Claimant was paid benefits to which she was not entitled, so she must pay them back.

Conclusion

[24] I am allowing the appeal, in part. The General Division made an error of law in how it applied the eligibility criteria. I have corrected the error. The Commission overpaid the Claimant \$1000.00 (and not \$2000.00). She is liable to repay it.⁸

Stephen Bergen
Member, Appeal Division

⁷ See section 52 of the EI Act.

⁸ See sections 43 and 44 of the EI Act.