



[TRANSLATION]

Citation: *Canada Employment Insurance Commission v BB*, 2024 SST 89

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Melanie Allen

**Respondent:** B. B.

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**Decision under appeal:** General Division decision dated August 2, 2023  
(GE-22-4216)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** Teleconference

**Hearing date:** January 9, 2024

**Hearing participants:** Appellant's representative  
Respondent

**Decision date:** January 29, 2024

**File number:** AD-23-821

## Decision

[1] The appeal is allowed.

## Overview

[2] The Respondent (Claimant) works for a telecommunications company. He stopped working from June 6, 2021, to February 19, 2022, because he was on parental leave. During that period, he received Quebec Parental Insurance Plan benefits.

[3] The Claimant then applied for Employment Insurance (EI) family caregiver benefits to support his mother. The Appellant (Commission) granted him 15 weeks of EI benefits, from February 20, 2022, to June 4, 2022.

[4] On June 5, 2022, the Claimant applied for compassionate care benefits to be with his mother.

[5] The Commission refused to pay him compassionate care benefits because it found that the Claimant did not have enough hours of insurable employment in the qualifying period, between June 6, 2021, and June 4, 2022.

[6] The Claimant is asking the Commission to reconsider the decision. He argues that the benefit period should start on February 20, 2022, which is the start of his family caregiver benefit period, and that he could apply for another type of special benefit.

[7] After reconsidering the decision on October 13, 2022, the Commission granted him compassionate care benefits. He could receive up to 26 weeks of compassionate care benefits as of June 5, 2022, at a rate of \$595 per week.

[8] On December 12, 2022, the Commission contacted the Claimant to tell him that it had to reverse its decision because of an error on its part. This meant that the Claimant had to repay all the compassionate care benefits. The Claimant appealed the reconsideration decision to the General Division.

[9] The General Division found that the Commission did not properly exercise its discretion when it decided to reconsider its own reconsideration decision. So, there was no need to decide whether the Claimant was entitled to compassionate care benefits.

[10] Permission to appeal was granted to the Commission. It argues that the General Division made an error of law.

[11] I have to decide whether the General Division made an error in finding that the Commission did not properly exercise its discretion when it decided to reconsider its own reconsideration decision.

[12] I am allowing the Commission's appeal.

## **Issue**

[13] Did the General Division make an error when it found that the Commission did not properly exercise its discretion when it decided to reconsider its own reconsideration decision?

## **Analysis**

### **Appeal Division's mandate**

[14] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.<sup>1</sup>

[15] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[16] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact that it made

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

in a perverse or capricious manner or without regard for the material before it, I must dismiss the appeal.

**Did the General Division make an error when it found that the Commission did not properly exercise its discretion when it decided to reconsider its own reconsideration decision?**

[17] The General Division found that the Commission did not exercise its discretion judicially when it decided to reconsider its own reconsideration decision.

[18] The General Division also found that the Commission can only reconsider, under section 52 of the *Employment Insurance Act* (EI Act), if an error that is unrelated to the decision being reviewed can be discovered.

[19] In a case involving the application of section 52 of the EI Act, a claimant may have acted and received benefits in good faith when it is later discovered that they did not meet the criteria of the EI Act or were disentitled from receiving those benefits.

[20] In the public interest, Parliament has provided for the reconsideration of benefit claims. But, in the interest of making fair and final decisions, it required that the reconsideration occur within 36 months of the time the benefits were paid or became payable.

[21] Case law has established that the only limitation on the Commission's power to reconsider under section 52 of the EI Act is time.<sup>2</sup> This means that the Commission may reconsider a claim under section 52 even if there are no new facts.

[22] In other words, the Commission can withdraw its earlier approval and require claimants to repay the benefits paid under that approval.

[23] The power conferred by section 52 is not confined to the reconsideration of decisions, as such, but is an authority to reconsider "**any claim**" in respect of which

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<sup>2</sup> *Brisebois v Canada (Employment and Immigration Commission)*, A-582-79; *Brière v Canada (Employment and Immigration)*, A-637-86.

benefits have been paid or should have been paid. The reconsideration of a claim is the reconsideration of the entitlement to benefits.<sup>3</sup>

[24] So, I am of the view that the General Division made an error of law when it found that the Commission could not withdraw its approval following a reconsideration decision in the Claimant's favour. It also made an error of law by determining that the Commission can only reconsider under section 52 if an error that is unrelated to the reconsideration decision is discovered.<sup>4</sup>

[25] The General Division also found that the Commission did not exercise its discretion judicially, since it simply told the Claimant that it had made an error in its reconsideration decision. It did not inform the Claimant of its process or its reasons for making a mistake.

[26] I am of the view that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[27] The reconsideration process under section 52 of the EI Act consists of four steps that must be completed within the time limits set out in the law: (i) the Commission must decide whether to exercise its discretion to reconsider; (ii) make the new decision; (iii) calculate the amount to be recovered or paid; and (iv) notify the claimant of the decision.

[28] The evidence shows that the Commission granted the Claimant compassionate care benefits as of June 5, 2022. It decided to exercise its discretion to reconsider, made the new decision, calculated the amount to be paid, and notified the Claimant of the decision, orally and in writing, on December 12, 2022. A notice of debt was sent to

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<sup>3</sup> See, for example, *Calder v M.E.I.*, (1980) 1 FC 842, A-233-79.

<sup>4</sup> The Digest of Benefit Entitlement Principles, Chapter 17 – Section 17.6.1.1 says that the Commission may also reconsider an error that is unrelated to the decision being reviewed. The Commission must then apply the reconsideration policy set out in section 17.3.3.

him on December 17, 2022. The Commission met the 36-month deadline set out in the law.

[29] The General Division also made an error by not making a decision on the Commission's refusal to extend the Claimant's benefit period and pay him compassionate care benefits.

[30] I am therefore justified in intervening.

## **Remedy**

[31] Because the file before the General Division is complete, I am able to give the decision that the General Division should have given.

[32] Case law has established that the only limitation on the Commission's power to reconsider under section 52 of the EI Act is time. So, the Commission may reconsider a claim under section 52 even if there are no new facts.

[33] The power conferred by section 52 is not confined to the reconsideration of decisions, as such, but is an authority to reconsider "any claim" in respect of which benefits have been paid or should have been paid. The reconsideration of a claim is the reconsideration of the entitlement to benefits.

[34] The Commission granted the Claimant compassionate care benefits as of June 5, 2022. It decided to exercise its discretion to reconsider, made the new decision, calculated the amount to be paid, and notified the Claimant of the decision, orally and in writing, on December 12, 2022. A notice of debt was sent to him on December 17, 2022. So, the Commission met the 36-month deadline set out in the law.

[35] However, the decision to reconsider a claim under section 52 is a discretionary one. This means that, although the Commission has the power to seek verification of entitlement or to reconsider a claim, it does not have to do so.

[36] The law says that discretionary powers must be exercised judicially. This means that, when the Commission decides to reconsider a claim, it cannot act in bad faith or

for an improper purpose or motive, consider an irrelevant factor, ignore a relevant factor, or act in a discriminatory manner.

[37] The Commission has developed a policy to help it exercise its discretion to reconsider decisions under section 52 of the EI Act.

[38] The Commission says the reason for the policy is “to ensure a consistent and fair application of section 52 of the [EI Act] and to prevent creating debt when the claimant was overpaid through no fault of their own.” The policy says that a claim will only be reconsidered when:

- benefits have been underpaid
- benefits were paid contrary to the structure of the [EI Act]
- benefits were paid as a result of a false or misleading statement
- the Claimant ought to have known there was no entitlement to the benefits received

[39] There is no doubt that the compassionate care benefits were paid to the Claimant contrary to the structure of the EI Act.<sup>5</sup>

[40] In my view, the Commission used its discretion judicially under section 52 of the EI Act. The Commission considered all relevant information when reconsidering the Claimant’s claim. No new relevant facts were provided at the General Division hearing that the Claimant had not already provided to the Commission. There is no indication that the Commission considered any irrelevant information or acted in bad faith or in a

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<sup>5</sup> Section 10(2) of the *Employment Insurance Act* (EI Act) says that a benefit period is 52 weeks. In this case, the 52nd week is the week ending June 4, 2022. So, the Claimant’s last renewable week was the week of May 29, 2022, as required by section 10(8) of the EI Act. In this case, since the Claimant did not receive compassionate care benefits in his initial benefit period from June 6, 2021, to June 4, 2022, he was not entitled to an extension of the benefit period to start receiving compassionate care benefits beyond June 4, 2022.

discriminatory manner. The Commission also acted with a legitimate purpose in reconsidering the Claimant's entitlement to benefits.

[41] While I sympathize with the Claimant, the law does not allow for an extension of the benefit period or give the General Division or the Appeal Division the power to grant an extension of that period, regardless of the particular circumstances of a claimant's situation.<sup>6</sup>

[42] The Commission's appeal should be allowed.

## **Conclusion**

[43] The appeal is allowed. The Commission used its discretion judicially, and extending the benefit period and paying compassionate care benefits was not possible.

Pierre Lafontaine  
Member, Appeal Division

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<sup>6</sup> The Claimant could apply to the Canada Revenue Agency to have the debt written off on the basis that the situation is causing him undue hardship.