



Citation: *Canada Employment Insurance Commission v TC*, 2024 SST 124

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Nikkia Janssen
Respondent: T. C.

Decision under appeal: General Division decision dated October 25, 2023
(GE-23-1955)

Tribunal member: Elizabeth Usprich
Type of hearing: Videoconference
Hearing date: January 31, 2024
Hearing participants: Appellant's representative
Respondent
Decision date: February 9, 2024
File number: AD-23-1019

Decision

[1] The appeal is allowed.

[2] I am allowing the appeal based on an agreement between the parties. The General Division based its decision on an important error about the facts of the case. This allows me to give the decision the General Division should have given. The Canada Employment Insurance Commission (Commission) overpaid the Claimant by \$1,080.00.

Overview

[3] T. C. is the Claimant. She had two different jobs in her qualifying period. There was a delay in receiving the Record of Employment (ROE) from her second employer. This resulted in an error in calculating her rate of weekly benefits.

[4] The Claimant appealed to the Social Security Tribunal (Tribunal). The General Division found there was an error in the calculations. The General Division concluded that the overpayment was less than what the Commission had calculated.

[5] The Commission then appealed that decision.

[6] At the hearing, the parties agreed on the number of weeks that should be included in the Claimant's qualifying period. They also agreed on the Claimant's total insurable earnings.

[7] I am allowing the appeal. The General Division made an important error of fact when it determined the number of weeks to be included in the Claimant's qualifying period. This changes the Claimant's weekly benefit rate.

[8] I have given the decision that the General Division should have given. The Claimant's overpayment is still \$1,080.00, like the Commission had originally calculated.¹

The parties agree on the outcome of the appeal

[9] At the hearing, the parties agreed on the following:

- The General Division based its decision on an important error about the facts of the case.
- In the circumstances, I should give the decision the General Division should have given.
- The Claimant worked 20 weeks in her qualifying period.

Issues

[10] The issues in this appeal are the following:

- a) Did the General Division base its decision on an important error of fact when it found the Claimant worked 19 weeks in her qualifying period?
- b) If so, how should the error be fixed?

Analysis

[11] Not any factual error is enough for me to intervene (step in). I have to decide if the General Division made an important, or critical, factual error. If the General Division based its decision on a finding of fact that the evidence contradicts, then I can intervene.²

[12] The General Division is given some freedom when it makes findings of fact. The law is clear that I can only intervene if the General Division "based its decision on an

¹ See GD3-52.

² See *Garvey v Canada (Attorney General)*, 2018 FCA 118 at paragraph 6.

erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.”³

The General Division based its decision on an important error of fact when it found the Claimant worked 19 weeks in her qualifying period

[13] The General Division **based its decision** on an **important** error about the facts of the case. The General Division found the Claimant only worked three weeks for her second employer.⁴ So, it concluded she worked 19 weeks in her qualifying period: 16 weeks for her first employer and three weeks for her second employer.

[14] The General Division ignored evidence it had before it. Specifically, that the Claimant had earnings in a fourth week with her second employer. This means she had a total of 20 weeks in her qualifying period: 16 weeks for her first employer and four weeks for her second employer.

[15] The General Division only looked at the Claimant’s hours up to the week of September 12, 2021.⁵ The Claimant had told the Commission that in addition to the hours shown on her worker report,⁶ she also worked on September 20, 2021.⁷ The Claimant agreed she worked on September 20, 2021.

[16] This means the Claimant had insurable earnings with her second employer during the following four weeks:

- week of August 22, 2021 (worked August 24, 2021)
- week of September 5, 2021 (worked September 10 and 11, 2021)
- week of September 12, 2021 (worked September 12 and 13, 2021)
- week of September 19, 2021 (worked September 20, 2021)

³ See section 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act).

⁴ See General Division decision at paragraph 26.

⁵ See General Division decision at paragraph 25.

⁶ See GD6-4.

⁷ See GD3-20.

[17] This is an important error of fact because it changes the calculation for the weekly benefit rate.

[18] At the hearing, the parties agreed on the following:

- The General Division used the correct formula.⁸
- The Claimant earned \$15,716.00 between her two employers.⁹
- The General Division correctly determined the Claimant was entitled to 17 weeks of Employment Insurance (EI) benefits.¹⁰
- The General Division was correct in deciding that the Claimant worked 16 weeks for her first employer.¹¹
- The General Division made an error when it decided the Claimant worked only three weeks for her second employer.¹²

[19] The number of weeks in the qualifying period is an important error of fact because it changes how the weekly benefits are calculated. The General Division divided the Claimant's earnings by 19 weeks which changes the weekly benefit rate.¹³

[20] But the weekly rate should be calculated by dividing the earnings for the qualifying period by 20 weeks.¹⁴

⁸ See General Division decision at paragraphs 13 to 17.

⁹ See ROEs for both employers at GD3-15 and GD3-25.

¹⁰ See General Division decision at paragraphs 29 and 32. Although the General Division said the unemployment rate for the Claimant's region is 7.5%, this is incorrect. It is 7.4%. This isn't an important error of fact though because there is no difference between those two percentages for the weeks of benefits a claimant would be entitled to. See Schedule I of the *Employment Insurance Act*.

¹¹ See General Division decision at paragraph 21.

¹² See General Division decision at paragraph 26.

¹³ See General Division decision at paragraph 28. The calculation was $\$15,716.00 \div 19 = \827.16 . That amount was then multiplied by 55%, which is the amount a claimant would receive. See General Division decision at paragraph 16 where $\$827.16 \times 55\% = \454.85 was rounded to \$455.00.

¹⁴ This is 16 weeks with her first employer and 4 weeks with her second employer.

[21] These lead to substantially different outcomes. That means it was an important piece of evidence that was ignored.

Remedy

[22] The parties agreed that, if I found an error, I should give the decision the General Division should have given. There is no suggestion by either party that they didn't present all of their evidence to the General Division.

[23] This means I can give the decision that the General Division should have given.

- **The Claimant's weekly benefits rate has to be calculated using the number of weeks she worked in the qualifying period**

[24] The Claimant worked 20 weeks during her qualifying period. This means her total insurable earnings during that time must be divided by 20.

[25] The calculation is $\$15,716.00 \div 20 = \785.80 . This is then multiplied by 55%, which equals $\$432.00$.¹⁵

[26] The Claimant was entitled to 17 weeks of benefits.

[27] This means the Claimant received an extra week of benefits that she should not have. She also received an overpayment of $\$36.00$ per week for the other 17 weeks.¹⁶ So, the Claimant's overpayment is $\$1,080.00$ like the Commission calculated.

- **I can't write off (cancel) the debt this overpayment created**

[28] The Claimant didn't dispute any of the calculation errors. She wants her debt to be written off due to financial hardship. The Claimant was aware I don't have the power to do this.¹⁷ She said she is waiting for the appeal process to be finished so the Commission will consider her request.

¹⁵ This is $\$785.80 \times 55\% = \432.19 , which is rounded down to $\$432.00$.

¹⁶ See GD3-52.

¹⁷ See *Canada (Attorney General) v Villeneuve 2005*, FCA 440; and *Buffone v Canada (Minister of Human Resources Development)*, A-666-99.

[29] The Commission acknowledged that it has received a request to write off the overpayment. It said that request can't be considered until this appeal process is finished.

Conclusion

[30] The appeal is allowed.

[31] The General Division based its decision on an important error of fact that affected the Claimant's weekly benefit rate.

[32] I have given the decision the General Division should have given. Based on the Claimant's total insurable earnings and weeks worked in her qualifying period, the Commission overpaid the Claimant by \$1,080.00 in EI benefits.

Elizabeth Usprich
Member, Appeal Division