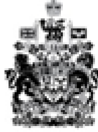

Citation: *KS v Canada Employment Insurance Commission*, 2024 SST 160

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	K. S.
Respondent:	Canada Employment Insurance Commission
Representative:	Érélégna Bernard

Decision under appeal:	General Division decision dated August 14, 2023 (GE-20-485, GE20-487, GE-20-524, GE-20-525, and GE-20-527)

Tribunal member:	Pierre Lafontaine
Type of hearing:	Videoconference
Hearing date:	February 6, 2024
Hearing participants:	Appellant Respondent's representative
Decision date:	February 21, 2024
File numbers:	AD-23-849, AD-23-850, AD-23-851, AD-23-852, and AD-23-853

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant (Claimant) worked for a spa. In 2014, the spa closed. The Claimant personally applied for Employment Insurance (EI) benefits and received them.

[3] The Respondent (Commission) was made aware that there were several unusual claims for benefits from employees of the spa. It began investigating the Claimant's employer. It discovered that applications for EI benefits were made for people who never worked for the employer. Benefits had been paid on those false claims and the money appeared to have been paid to the Claimant. The Commission gave the Claimant a warning against making false or misleading representations and asked her to pay back the money that went into her bank account. The Claimant disagreed and appealed the reconsideration decision to the General Division.

[4] The General Division determined that the Commission had the authority to review the claims in question when it did. It found that the Claimant participated in making false or misleading misrepresentations in relation to claims for benefits in the names of other claimants by allowing her bank account to be used. She agreed to money from fraudulent EI claims being deposited in her bank account. The General Division found that the Claimant received benefits she was not entitled to and must repay them. The General Division dismissed the Claimant's appeals.

[5] In support of her application for leave to appeal, the Claimant submitted that the General Division erred in law because she did not willingly participate in the « fraud ». She acted under duress and under pressure from S.N., given her precarious financial situation and young age at the time of the events. The Claimant put forward that she is a victim of S.N.'s fraudulent actions. She submitted that the Commission should have claimed the monies from S.N. By acting this way, the Commission acted unreasonably

and infringed the principals of natural justice. The Claimant submitted that the General Division violated her rights to procedural fairness by taking over a year to render its decision. She submitted that the delay of 9 years in her case violated her rights.

[6] In a detailed decision, the Appeal Division decided to grant the Claimant leave to appeal only on the issue of denial of natural justice because of the delay.

[7] I must decide whether the General Division made an error by not deciding an issue that it should have decided.

[8] I am dismissing the Claimant's appeal.

Issue

[9] Did the General Division make an error by not deciding an issue that it should have decided?

Preliminary matters

[10] It is well established that the Appeal Division must consider the evidence presented to the General Division to decide the present appeal.[1]

[11] I proceeded to listen to the recording of the General Division hearing to decide the present appeal.

[12] I refer in my decision to exhibits numbers indicated in the master file AD-23-849.

Analysis

Did the General Division make an error by not deciding an issue that it should have decided?

[1] *Sibbald v Canada (Attorney General)*, 2022 FCA 157. None of the exceptions apply in the present case.

[13] Before the General Division, the Claimant argued that her right to natural justice was breached because of the delay of 9 years in her case. She submitted that a stay of proceedings should be granted.

[14] The General Division determined that it did not have the authority to resolve that sort of question and directed the Claimant to the Commission's Office for Client Satisfaction.

[15] Before me, the Claimant reiterates that her right to natural justice was breached because of the delays in her case. She argues that the delays are the fault of the Commission and the General Division and have caused her a great deal of stress and anxiety over the years. The Claimant also argues that her ability to present a full and complete defence was compromised by the excessive delays.

[16] The Claimant submits that the General Division should have ordered a stay of proceedings because of the excessive delays that have caused her serious harm.

[17] The Commission is of the view that the General Division did not make any error when it determined that it did not have the authority to resolve that sort of question. If it did, the Commission submits that the Claimant did not meet the burden of proof required by the *Norman* case to obtain a stay of proceedings.[2]

[18] The General Division found that the Commission was within 72 months of the date of the first application for benefits had been submitted. It found that from the evidence collected, the Commission could believe several false or misleading statements or representations had been made. It concluded that the Commission was within the time limits to review the claims for benefits.

[19] I previously found no reviewable error in the General Division's conclusion that the Commission acted within the legal time limits. The evidence shows that the

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[2] *Canada (Attorney General) v Norman*, 2002 FCA 423. See also *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLII), [2000] 2 S.C.R. 307.

Commission could reasonably find that a false or misleading statement was made in connection with the claims for EI benefits.[3]

[20] The Commission concluded its investigation within the 72-month time frame stipulated by the *Employment Insurance Act* (EI Act). The Tribunal does not have the power to change the investigation delays stipulated in the EI Act. Only Parliament has the power to do this.

[21] Therefore, the relevant events, with respect to delays, can be summarized as follows:

> -The Commission rendered five reconsideration decisions on January 9 and January 10, 2020. These five decisions resulted in overpayments totalling approximately $7000;
>
> -On February 10, 2020, the Claimant appealed these five reconsiderations decisions of the Commission to the General Division; In her appeal application, the Claimant requested that the hearing be held in person in a Service Canada centre or by videoconference in a Service Canada centre;[4]
>
> -On March 9, 2020, the Claimant's representative indicated that she was available for the hearing on May 4, 5, 11 or 12, 2020;[5]
>
> -On March 10, 2020, the General Division scheduled an in-person hearing for May 4, 2020;[6]
>
> -On March 25, 2020, the hearing was adjourned until further notice following the government instructions to self-isolate. The Claimant had insisted on an in-person hearing.[7] She was offered to communicate at any time with the Tribunal if she changed her mind and wanted a hearing by teleconference;[8]

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[3] See my Leave to Appeal decision dated November 15, 2023.
[4] See GD2-3.
[5] SeeGD5-1.
[6] See GD1-1.
[7] See email dated March 23, 2020.
[8] See GD-6-1.

-On October 7, 2021, the General Division left a message to the Claimant's representative to see if they would be interested of having a teleconference or videoconference hearing instead.[9]

-On April 8, 2022, the General Division scheduled a videoconference hearing for April 28, 2022;[10]

-On April 8, 2022, the Claimant requested an adjournment because her representative was not available on April 28, 2022;[11]

- On April 20, 2022, the General Division wrote that it tried multiple times to communicate with both the Claimant and her representative by telephone, with the phone numbers on file, without success and to communicate with the General Division without delay; It required an answer at the latest April 29, 2022.[12]

-On May 4, 2022, the General Division scheduled a videoconference hearing for May 19, 2022;[13]

-On May 19, 2022, at the outlet of the hearing, the General Division was made aware that the Claimant's representative did not receive the Commission's submissions. The hearing was adjourned to July 6, 2022, in accordance with the availabilities of the parties;[14]

-On July 6, 2022, the hearing proceeded by videoconference;

-On August 14, 2023, the General Division rendered its decision regarding the five reconsideration decisions.

[22] There was a delay of 30 months between the reconsideration decisions rendered by the Commission and the General Division hearing. I note that 24 months are the result of the Claimant's insistence on an in-person hearing during the COVID-19 pandemic. She was given from the start the opportunity by the General Division to change the method of hearing at any time but did not make such a request. Had she

[9] General Division, conversation log of October 7, 2021.
[10] See GD7-1.
[11] See GD8-1.
[12] See GD8-1, GD8-2.
[13] See GD9-1, GD9-2.
[14] See GD10-1, GD10-2.

done so, a hearing could have been held as soon as May or June 2020. Another delay of one month was the result of the Claimant's representative not being available at a scheduled hearing date. These delays are therefore not due to the negligence or fault of the General Division, or the Commission and they cannot be blamed for them.

[23] The Claimant submits that the General Division took over a year to render its decision. She puts forward that this delay is six times the normal delay of 60 days.

[24] The Federal Court of Appeal in *Norman* had strong reservations about applying principles developed in the human rights context to the realm of economic rights. Despite these reservations, the Court instructs us that delay, without more, will not constitute an abuse of process that warrants a stay of proceedings at common law. To justify a stay in the administrative law context, the Court says proof that significant prejudice has resulted from an unacceptable delay is required.[15]

[25] The Appeal Division has considered on several occasions whether the Tribunal has jurisdiction to rule on such a request. The Appeal Division appears to be divided on that question.[16] In any case, even if I was to conclude that the General Division had jurisdiction, I am of the view that the Claimant has not demonstrated by proof before the General Division that she is entitled to the remedy she is seeking.

[26] A breach of natural justice and the duty of fairness may occur when the delay impairs a party's ability to answer the complaints against them because, for example, memories have faded, essential witnesses have died, or evidence has been lost. In short, the undue delay must impair the fairness of the hearing.

[27] An unacceptable delay may constitute an abuse of process in certain circumstances, even if the fairness of the hearing has not been impaired. Therefore, to constitute an abuse of process in cases where the fairness of the hearing has not been

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[15] *Canada (Attorney General) v Norman*, 2002 FCA 423, par. 29.
[16] *V. A. v Canada Employment Insurance Commission*, 2018 SST 783 (CanLII); *S. W. v Canada Employment Insurance Commission and Health Canada*, 2018 SST 672 (CanLII); *D. B. v Canada Employment Insurance Commission*, 2016 CanLII 104009 (SST); *Canada Employment Insurance Commission v R. T.*, 2015 SSTAD 1156 (CanLII); *D. L. v Canada Employment Insurance Commission*, 2014 SSTAD 333 (CanLII).

impaired, the delay must be clearly unacceptable and have directly caused significant prejudice. In addition to its long duration, the delay must have caused actual prejudice of such magnitude that the public's sense of decency and fairness is affected.

[28] I agree with the Claimant that the delay of more than one year for the General Division to render its decision is unacceptable. However, this delay did not impair the fairness of the hearing held on July 6, 2022.

[29] I cannot see how waiting 13 months for the General Division to render its decision caused the Claimant a significant prejudice when she had already agreed to wait 24 months for an in-person hearing instead of promptly presenting her case to the General Division by agreeing to another type of hearing in March 2020.

[30] I cannot see how the Claimant suffered any significant prejudice because of the delay, given that the Claimant admitted during an interview held by the Commission on April 29, 2019, that she had authorized S.N. to use her bank account, that she had cashed cheques, and stated that she did not recall why she didn't give the money back to S.N.[17]

[31] Even if S.N. owed the Claimant money, or that other potential witnesses had cashed cheques under pressure from S.N., this evidence would not have changed the fact that the Claimant had received and kept money from the Commission that was paid to her based on false EI claims. She was not entitled to that money and must reimburse it. Therefore, no essential witnesses or relevant documents have been lost.

[32] After listening to the recording of the General Division hearing that lasted two hours, I find that the Claimant was able to respond to the complaints made against her and that the fairness of the hearing was not affected in any way.

[33] The evidence submitted simply does not justify the granting of a remedy based on the applicable principles of administrative law. I cannot conclude, based on the

[17] See GD3-20.

teachings of the Federal Court of Appeal, that the delay caused actual prejudice of such magnitude that the public's sense of decency and fairness is affected.

[34] I find that the Claimant did not meet her burden, which consisted of showing that the delay in the proceedings was unacceptable and that she had experienced significant prejudice of such magnitude that the public's sense of decency and fairness is affected.

[35] I sympathize with the Claimant who was very young at the time of the relevant events, but there is nothing to support ordering a remedy based on the applicable principles of administrative law.

Conclusion

[36] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division