



Citation: *Canada Employment Insurance Commission v CG*, 2024 SST 1643

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Melanie D'Aguanno

Respondent: C. G.

Decision under appeal: General Division decision dated October 14, 2024
(GE-24-2715)

Tribunal member: Elizabeth Usprich

Decision date: November 29, 2024

File number: AD-24-745

Decision

[1] The appeal is allowed.

[2] The General Division made an error of law and jurisdiction. The matter must go back to the General Division for reconsideration.

Background

[3] C. G. is the Claimant. He applied for, and established, an Employment Insurance (EI) benefit claim in April 2019.

[4] In December 2022, the Canada Employment Insurance Commission (Commission) reconsidered the benefit claim. The Claimant had worked for another employer for eight days in June 2019.¹ The Claimant reported his earnings but may have reported them in the wrong week.² The Commission says the Claimant made false or misleading statements when he submitted his claimant reports.

[5] The Commission said it had more than 36 months to reconsider the claim because of the false or misleading statements. The Commission also decided that the Claimant voluntarily left this job. This meant the Claimant was disqualified from EI benefits because he quit.³ This created a substantial overpayment.

[6] The General Division made an error of law because it didn't apply legally binding case law. It also made errors of jurisdiction. It didn't do an analysis about whether the Claimant had made false or misleading statements and whether the Commission exercised its discretion judicially when it reconsidered the Claimant's benefits.

[7] There are some gaps in the evidence. The case must return to the General Division for further submissions.

¹ See GD3A-13, the Claimant's Record of Employment for that employer.

² See GD3A-18, where the Claimant reported earnings of \$5,193.00. See also GD3A-45, which says that no earnings were reported for the week of June 16, 2019.

³ See GD8-21, the Claimant didn't agree that he quit. He says he was let go.

The parties agree on the outcome of the appeal

I accept the parties' agreement

[8] I can intervene (step in) only if the General Division made an error. I can only consider certain errors.⁴ An error of law and an error of jurisdiction⁵ are errors that I can consider.

[9] The Commission says the Claimant made false or misleading statements which gave them the authority to review the claim for benefits beyond 36 months.⁶

[10] The General Division didn't apply legal binding case law that required an analysis about whether there were false or misleading statements. Additionally, the General Division didn't do any analysis about whether the Commission used its discretion judicially when it reconsidered the claim. When the Commission has the discretion to do something, it can only be changed by the Tribunal **if** the Commission didn't exercise its power judicially.⁷

[11] The Commission also says there are gaps in the evidence. The General Division didn't ask the Claimant about details surrounding this employment. Yet, the General Division decided that the Claimant was only attempting the employment.⁸ The Claimant believes that because he has two active files the General Division may not have considered all his relevant evidence.⁹ For this reason, the parties asked for the case to return to the General Division for further submissions.

⁴ See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁵ An error of jurisdiction occurs when the General Division didn't decide something it should have, or decided something it shouldn't have.

⁶ The Commission has the power to re-examine claims under section 52 of the Employment Insurance Act. But the power must be exercised judicially, by following the legal test set out in *Attorney General (Canada) v Purcell*, [1996] 1 FC 644. Furthermore, to extend the time from 36 months to 72 months, it must be determined if the claimant made false or misleading statements.

⁷ See *Attorney General (Canada) v Knowler*, A-445-05.

⁸ The Commission also questions this analysis as the issue was about voluntary leaving not availability.

⁹ See GD8-21 there is also a potential error of fact that the General Division overlooked evidence that the Claimant was let go, rather than quitting.

Remedy

[12] I agree there are errors in the General Division's decision. There are two main ways I can remedy (fix) them. I can make the decision the General Division should have made. I can also send the case back to the General Division if there isn't enough information to make a decision.¹⁰

[13] The parties say there is not enough information for me to make a decision. I agree. There is contradictory evidence whether the Claimant quit or was let go, and that was not explored.¹¹

Conclusion

[14] The appeal is allowed.

[15] The General Division made an error of law and jurisdiction. The matter must go back to the General Division for reconsideration.

Elizabeth Usprich
Member, Appeal Division

¹⁰ Section 59(1) of the DESD Act allows me to fix the General Division's errors in this way.

¹¹ See GD3A-53, GD8-8 and GD8-21. There is unclear evidence about whether the Claimant quit or was let go.