Citation: *NB v Canada Employment Insurance Commission*, 2024 SST 1626

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	N. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (664467) dated June 11, 2024 (issued by Service Canada)

Tribunal member:	Elyse Rosen
Type of hearing:	Videoconference
Hearing date:	September 4, 2024
Hearing participant:	Appellant
Decision date:	September 5, 2024
File number:	GE-24-2681

Decision

[1] The appeal is allowed.

[2] The Appellant received four weeks of standard parental benefits that she wasn't entitled to under the law.

[3] But the Canada Employment Insurance Commission (Commission) didn't act judicially (as that term is explained, below) when it reconsidered the Appellant's claim and assessed an overpayment. The claim shouldn't have been reconsidered.

[4] As a result, the overpayment must be set aside.

Overview

[5] The Appellant was about to have a baby. She applied for 15 weeks of maternity benefits and 20 weeks of standard parental benefits. Her husband applied for standard parental benefits as well.

[6] Both the Appellant and her husband provided the name and social insurance number of the other parent on their application.

[7] The Appellant's husband says that according to his MyServiceCanada account his last payable week of benefits was at the end of October. This was four more weeks than he had planned to be on leave.

[8] He and the Appellant contacted the Commission to confirm the information set out in his account and to see if those four additional weeks of benefits, which he wouldn't be using, could be transferred to the Appellant.

[9] The first agent the Appellant and her husband spoke with confirmed that her husband was entitled to those four additional weeks that appeared in his account and that those weeks could be transferred to the Appellant. They were told that after the transfer the Appellant would receive benefits until March 2024. The call disconnected before it was completed.

[10] The Appellant didn't trust the information she'd received. She had initially planned to return to work in early January. She didn't understand how the transfer of four additional weeks from her husband to her could result in benefits being paid until March. She wanted to be absolutely sure of the information received before acting on it. So, she called the Commission again.

[11] During the second call, the Appellant was told that she would receive 24 weeks of benefits instead of 20 and that her benefits would end on February 4, 2024.[1] This information made more sense to her. But having obtained different information previously, she asked the agent to confirm that they were absolutely sure that the information they had provided was correct. They confirmed that it was.

[12] Relying on the information she'd received during the second call, the Appellant arranged with her employer to extend her leave by four weeks. The Commission paid her $2600 during those four weeks. She returned to work on February 4, 2024.

[13] On March 27, 2024, the Commission reconsidered the Appellant's claim. It advised her that she wasn't entitled to the additional benefits she'd received because the maximum number of weeks of benefits set out in the law had already been paid. Her husband had received 20 weeks of benefits and she had received 24. But the law says the maximum number of weeks two parents can share is 40.

[14] The Commission has called upon the Appellant to repay the $2600 it had paid to her in error.

[15] The Appellant says this is unfair. She says she relied on what she was told by the Commission. She never would have taken an additional four weeks of leave if she hadn't received confirmation from the Commission that she would be paid benefits during those four weeks.

[16] She argues that she should be entitled to rely on the accuracy of the information she received from the Commission. She says she spoke with two Commission agents,

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[1] There is a call log confirming this. See GD3-18.

and both of them told her that she was entitled to receive an additional four weeks of benefits.[2]

[17] The Appellant says the Commission had all of the necessary information to determine that she wasn't entitled to the additional four weeks it paid to her. In her view, it should have cross-checked her husband's file when it confirmed to her that she could receive an additional four weeks of benefits. She argues that she shouldn't be responsible for the Commission's mistake.

Issues

[18] Although the Commission has framed this appeal as being about the number of weeks of parental benefits the Appellant is entitled to, it isn't.

[19] The Appellant doesn't dispute that the law provides that the maximum number of weeks of standard parental benefits that can be divided between parents is 40. She's saying that the Commission should have known not to pay her more weeks of benefits than the law allows for. Moreover, she relied on what she was told and acted accordingly. She believes she shouldn't have to repay the overpayment in the circumstances.

[20] I find that the issues in appeal are:

1. What do I have the authority to decide in this appeal?
2. Did the Commission act judicially when it reconsidered the Appellant's claim?
3. If it didn't, should the claim be reconsidered?

[2] In fact, one of the agents told her she would receive more than four additional weeks of benefits.

Analysis

What do I have the authority to decide?

[21] The Tribunal's authority to decide an appeal comes from the *Employment Insurance Act* (Act). The Act says the Tribunal can only hear appeals from reconsideration decisions.[3]

[22] The Commission's reconsideration decision is about whether the Appellant received more weeks of parental benefits than she was entitled to. But that isn't what the Appellant was asking the Commission to reconsider. She was contesting the fairness of the Commission's decision to revisit her claim and create an overpayment when that overpayment resulted from the Commission's own error and from no fault of her own. In other words, without saying so in so many words, she was claiming that the Commission didn't act judicially when it reconsidered her claim.[4]

[23] The Commission didn't address that argument in its reconsideration decision. It doesn't say whether or not it believes it acted judicially when it revisited the Appellant's claim and created an overpayment. And it has provided no information about what facts it took into consideration when it chose to use its discretionary power to reconsider the Appellant's claim.

[24] In appeal, the Appellant continues to claim that she shouldn't have to repay the overpayment because it results from the Commission's error. She isn't arguing that the Commission has misstated the number of weeks of benefits she's entitled to under the law. She's just saying that she shouldn't have to pay for the Commission's mistake.

[25] I find that it's within my jurisdiction to consider whether the Commission acted judicially when it reconsidered the Appellant's claim on its own initiative and created an overpayment.

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[3] See section 113 of the Act.
[4] I will explain when the Commission may reconsider a claim on its own initiative, below.

[26] The Appeal Division of the Tribunal (AD) has held that the Tribunal should take a broad view of its jurisdiction (in other words, what it has the authority to make decisions about) in order to manage appeals fairly.[5] I agree with that principle, even though I'm not bound by the AD's decisions.

[27] Keeping that principle in mind, I find that my jurisdiction extends to anything that was before the Commission on reconsideration, regardless of whether or not the Commission explicitly addressed it in its reconsideration decision. In my view, failing to decide an issue put before it is nonetheless a decision.

[28] I find that by not addressing the Appellant's contention that it didn't act judicially, the Commission implicitly decided that it did. And I can review that decision in appeal.

[29] So, I'm going to look at whether the Commission acted judicially when it reconsidered the Appellant's claim. That's what the Appellant had asked the Commission to do, and it's what she's asking me to do in her appeal.

[30] I didn't give the Commission an opportunity to provide submissions on that issue before proceeding with my decision. That's because I don't see it as a new issue.

[31] In my view, whenever the Commission reconsiders a claim on its own initiative (in other words, decides to revisit its own decision)[6] and the Appellant asks it to reconsider (in other words, review a decision it thinks is wrong), and then appeals that decision, the Commission should address the following points in its submissions to the Tribunal:

- it should confirm that the decision giving rise to the appeal was made under its power to reconsider the claim on its own initiative
- it should demonstrate that it acted within the delay set out in the law to do so

[5] *MS v Canada Employment Insurance Commission*, 2022 SST 933.
[6] The Act uses the term reconsider both when the Commission revisits a decision it made on its own initiative under section 52 of the Act, and when a claimant asks it to review a decision it made under section 112 of the Act. I acknowledge that this can be confusing.

- it should demonstrate that it acted judicially when it exercised its discretion to reconsider the claim

[32] Because the Commission's power to reconsider its own decision is discretionary, whether the Commission exercised its discretion judicially is an inherent element of any reconsideration decision,[7] where the underlying decision results from the exercise of that power.

[33] Just as it does when it issues a penalty or refuses a late reconsideration request,[8] whenever the Commission exercises its discretionary power to reconsider, it should substantiate that it exercised its discretion appropriately.

[34] In my view, the rules of natural justice and procedural fairness don't require me to invite the Commission to provide submissions on the issue of whether it acted judicially.[9] That issue is an intrinsic element of its reconsideration decision, and it was specifically raised by the Appellant both in her reconsideration request and in her appeal.

[35] As I see it, it could have, and should have done so when it provided its submissions with respect to this appeal. It chose not to.

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[7] I'm referring to a decision made under section 112 of the Act, after a claimant has made a reconsideration request.
[8] These are also discretionary decisions.
[9] I'm aware that the Tribunal's Appeal Division decided otherwise in *Canada Employment Insurance commission v Y.G.*, 2024 SST 45. But I don't agree that the determination of whether the Commission acted judicially when it exercised its power to reconsider a claim cannot reasonably be said to stem from the same grounds as an appeal of a reconsideration decision where the underlying decision resulted from the Commission's exercise of that power (see *R v Mian*, 2014 SCC 54). And I'm not bound by the Appeal division's decision. Furthermore, in *R v G.F.*, 2021 SCC 20, the Supreme Court clarified that *Mian* gives an appellate body the discretion to determine if additional submissions are warranted when it raises a "new" issue that is rooted in the issues already raised by the parties (see paragraph 93 of the decision). And in all events, as the Supreme Court points out in *Attorney General of Canada v Mavi*, 2011 SCC 30, procedural fairness isn't a one size fits all concept. Rather, it depends on a party's legitimate expectations (see paragraph 42 of the decision). The Commission can't reasonably expect that it will be given a second chance to address issues that it should have addressed in its original submissions. The Commission is an expert on the application of EI law. It knows, or should know, what issues are raised by an appeal and what issues it should be providing submissions on.

[36] Moreover, because the Commission elects not to attend hearings of the Tribunal in most cases, it's essential that its submissions be complete.

[37] Requiring additional submissions from the Commission on issues it should have addressed in its original submissions following the hearing creates additional (and unnecessary) delays. This is unjust to the Appellant and isn't in keeping with the Tribunal's commitment to make the appeal process simple, quick, and fair.

[38] So, when the Commission decides not to provide submissions prior to the hearing on whether it acted judicially when exercising its reconsideration power in cases where that power has been exercised, it does so at its own peril. It should take for granted that it won't be given a further opportunity to do so and should act accordingly.

Did the Commission act judicially?

[39] I find that the Commission didn't act judicially when it reconsidered the Appellant's claim.

[40] The law allows the Commission to reconsider a claim for benefits on its own initiative.[10] But whether or not to use that power is a discretionary decision. Just because the Commission can reconsider a claim doesn't mean that it should.

[41] When the Commission does decide to reconsider a claim on its own initiative, the Tribunal must be respectful of the Commission's discretion.

[42] However, when the Commission makes a discretionary decision, case law says that it must act **judicially**.[11] This means it has to act in good faith and in a consistent and fair manner. It must consider all of the relevant facts, but only the relevant facts, to arrive at its decision. If it doesn't, then the Tribunal can substitute its own decision for the decision the Commission made.

[43] When the Commission decides to use its power to reconsider a claim (in particular, when its decision to do so results in an overpayment), it must contemplate

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[10] See section 52 of the Act.
[11] See *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

whether, in the particular circumstances of the case, correcting a mistake where benefits were overpaid is justified in light of the claimant's right to consider the decision that was initially made as final.[12]

[44] In other words, claimants should be able to rely on decisions made about their benefits, and mistakes should only be corrected retroactively when it's fair and reasonable to do so in the circumstances.

[45] Therefore, when the Commission decides whether it should use its power to reconsider a claim, any facts that would help to resolve the tension between accuracy and finality are relevant to their decision. And if the Commission fails to consider such facts when it decides to reconsider a claim, it may be found to have not acted judicially.

[46] The Commission has a policy about when it will exercise its discretion to reconsider a claim (the reconsideration policy).[13]

[47] The reconsideration policy was developed to ensure a consistent and fair application of the law regarding discretionary reconsideration decisions, and to prevent creating debt when a claimant is overpaid benefits through no fault of their own.[14]

[48] The reconsideration policy says that the Commission will only use this power when:

- benefits have been underpaid
- benefits were paid contrary to the structure of the Act[15]
- benefits were paid as a result of a false or misleading statement

[12] See *MS v Canada Employment Insurance Commission*, 2022 SST 933 and *Canada Employment Insurance Commission v MA*, 2022 SST 1018. I'm not bound by these decisions, but I find them helpful in this case.
[13] See the *Digest of Benefit Entitlement Principles* (Digest), at section 17.3.3.
[14] See section 17.3.3 of the Digest.
[15] **Structure of the Act** is defined as the basic elements to set up a claim and pay benefits.

- the claimant ought to have known there was no entitlement to the benefits received

[49] The reconsideration policy also says that the Commission generally won't create an overpayment when the overpayment results from a Commission error.[16]

[50] The AD says that the factors set out in the reconsideration policy are relevant facts the Commission must contemplate when it decides whether to use its power to reconsider.[17] It says that although the Commission isn't bound by its policy, if it decides not to apply it, it must nonetheless explain why. I agree with the AD's reasoning.

[51] In this case the Commission hasn't shown that it even turned its mind to the facts that would help it to resolve the tension between accuracy and finality. I see no evidence that it contemplated that the overpayment results from its own error. Nor did it consider that the overpayment results from no fault of the Appellant's and that the Appellant had no reason to believe that she wasn't entitled to the benefits she'd received. These were relevant considerations that it should have taken into account when deciding whether it should reconsider the Appellant's claim.

[52] In the absence of any evidence that the Commission reflected on whether it should reconsider the Appellant's claim, or that it took these relevant factors into consideration, I find that it didn't act judicially.

[53] Because I have found that the Commission didn't act judicially, I can make the decision that it should have made in its place.

Should the Appellant's claim have been reconsidered?

[54] I find that the decision to pay the Appellant an additional four weeks of standard parental benefits shouldn't be reconsidered in this case.

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[16] See section 17.3.2.2 of the Digest. When the Commission has the information required to make a decision, but the decision isn't supported by that information, this is considered to be an error.
[17] See *MS v Canada Employment Insurance Commission*, 2022 SST 933. Although I am not bound by that decision, I find it helpful in this case. I agree that the policy sets out relevant facts that the Commission should consider when it decides to reconsider a claim on its own initiative.

[55] I'm of the view that it's only in exceptional circumstances that accuracy should trump finality. And there are no such exceptional circumstances in this case.

[56] Although I'm not bound by the Commission's reconsideration policy, I do find it helpful in resolving the tension between accuracy and finality.

[57] The Appellant argues that the overpayment results from the Commission's own error. I agree with the Appellant.

[58] I find that the Commission made a number of errors in this case.

[59] First, from the Appellant's husband's testimony, it appears that the Commission initially approved him for 24 weeks of benefits. His MyServiceCanada account indicated that he had 24 payable weeks of standard parental benefits. But since the Appellant had been approved to receive 20 weeks of standard parental benefits, he should only have been approved for 20 weeks.[18]

[60] The Appellant's husband says he called the Commission to confirm that he was entitled to the extra four weeks indicated on his account and was told that he was. This was another error.

[61] Had the Commission not mistakenly approved the Appellant's husband for 24 weeks of benefits, and then mistakenly confirmed that this information was correct, there never would have been any discussion of transferring those four extra weeks to the Appellant.

[62] The Commission committed a further error when it agreed, on October 30, 2023, to transfer the four weeks of benefits the Appellant's husband should have never been approved for to the Appellant, bringing her total number of weeks of approved benefits to 24.[19] It had all of the information required to determine that the law didn't allow for this. But it failed to take that information into consideration.

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[18] See section 12(4)(b)(i) of the Act.
[19] See GD3-18.

[63] Then it committed a final error by paying out those four weeks of benefits during the weeks of January 7 through January 28, 2024, when the maximum entitlement of 40 weeks of benefits to share between parents had been reached on January 6, 2024.

[64] I also find that the Appellant wasn't at fault in any way for this overpayment. I have no evidence that she made any false or misleading statements or that she was aware that she wasn't entitled to the benefits she received.[20] To the contrary, the evidence demonstrates that she specifically asked for confirmation and was reassured that she was entitled to the additional four weeks of benefits she had asked for. In my view, she had every reason to believe she was entitled to the additional four weeks of benefits she received.

[65] All of these facts favour finality over accuracy. And I don't see any facts that would favour accuracy over finality.

[66] I accept that in most, but not all, situations where benefits have been paid in circumstances that are contrary to the structure of the Act, accuracy should trump finality. I believe that this may be true even in some circumstances where the claimant isn't at fault. However, in this case I'm unable to conclude that the payment of an additional four weeks of benefits is contrary to the structure of the Act.

[67] **Structure of the Act** is a somewhat ambiguous concept. It's defined by the Commission as being the elements necessary to set up a claim and pay benefits.

[20] I note that the application for benefits mentions the 40-week maximum. But clearly the Appellant didn't understand or remember this. That isn't surprising given the length of the application form. Having clearly not absorbed or retained the information mentioned therein, she reached out to the Commission to better understand her entitlement. Moreover, the information set out in her husband's MyServiceCanada account indicated that they hadn't attained the 40-week maximum.

[68] In its policy, the Commission gives a list of examples of requirements in the law that it says relate to the structure of the Act.[21] The maximum number of weeks of benefits that can be paid under the law isn't amongst those examples.[22]

[69] My understanding of the concept of structure of the Act is that it concerns the elements required to initially qualify for benefits.

[70] In this case, there is no question that the Appellant qualified for benefits. She met all of the elements necessary for the Commission to set up a claim and pay her benefits.

[71] So, I'm unable to conclude that the Commission's decision to pay her four more weeks of benefits than she was entitled to under the law is something that is contrary to the structure of the Act.

[72] And even if I'm wrong about the meaning of the term "structure of the Act", I'm not bound by the Commission's policy. I don't agree that all claims where benefits were paid contrary to the structure of the Act must always be reconsidered. In my view, they shouldn't be when there are compelling reasons to conclude that the tension between accuracy and finality should be resolved in favour of finality.

[73] When I weigh the facts in this case, I find that this is a case where the Appellant should be entitled to rely on the decision that was made to continue paying her benefits even after she'd received the maximum number of weeks of standard parental benefits the law allows. I think that finality is more important than accuracy in this case.

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[21] See section 17.3.3.2 of the Digest.
[22] I do note that after listing examples of situations that would **not** be contrary to the structure of the Act, the Digest says: "These elements represent situations that may affect whether benefits can be paid in any given week, but would not prevent the establishment of a benefit period, *the determination of the number of weeks of payment* or the calculation of a benefit rate." However, I take this reference to the number of weeks of payment to refer to the examples it gives of situations that are contrary to the structure of the Act and would impact the number of weeks of benefits paid (such as meeting the conditions to extend the benefit period, or errors in the record of employment that might impact the number of weeks payable). I don't think it means that in all cases the number of weeks paid is an issue that relates to the structure of the Act. If this is what the Commission intended, I believe it would have said so clearly.

[74] As set out above, the Commission made numerous errors in its treatment of the Appellant's claim and that of her husband. And in my view, they are errors that never should have been made.

[75] The Commission asks claimants to provide the name and social insurance number of the other parent on the application form for parental benefits. If it asks for and is given that information, surely it should be taking it into account when it makes its decision about how many weeks of benefits it will pay to each parent.

[76] I must therefore conclude that either the Commission doesn't have a mechanism in place to use that information to ensure that the 40-week maximum of standard parental benefits that can be divided amongst parents isn't exceeded, or that mechanism isn't effective.

[77] In either case, I'm of the view that the Appellant shouldn't be made to pay for the Commission's mistakes or its incomplete or inadequate operational systems.

[78] In my view it's the Commission's responsibility, and not the claimant's, to ensure that a claimant doesn't receive more weeks of benefits than the law allows.

[79] Moreover, if the Commission were able to reconsider a claim every time it made a mistake about something it considers to be contrary to the structure of the Act, there would be no incentive for it to ensure that it avoid mistakes whenever possible, that its agents are properly trained to give claimants correct advice, and that the operational procedures it puts in place are effective.

[80] Neither the Appellant, nor anyone else, made any false or misleading statements to the Commission that induced it to pay her benefits she wasn't entitled to at law. The overpayment in this case is entirely attributable to the Commission, and no one else.

[81] The Appellant checked with the Commission more than once to ensure that she was entitled to the additional four weeks that her husband wouldn't be using. Having obtained the Commission's assurance that she was, it's clear that the Appellant had no reason to believe that she wasn't entitled to the benefits she received.

[82] Furthermore, in the application form, the Commission specifically undertakes to provide claimants with accurate information about how parental benefits can be shared amongst spouses.[23] So, the Appellant had every reason to believe that the information she received about sharing parental benefits with her husband was accurate.

[83] For all of these reasons, I find that the claim shouldn't have been reconsidered in this case. I find that the Commission's decision to exercise its discretion in favour or reconsidering the claim was manifestly unjust in the circumstances.[24] The Appellant was entitled to rely on the decision the Commission made to pay her four additional weeks of benefits, even if it was wrong.

The fact that the Appellant was misinformed doesn't impact my decision

[84] The Commission argues that the Tribunal has no authority to set aside the requirements of the law even if it misinformed the Appellant.

[85] In the decision the Commission cites to support its argument (the Granger case),[25] the claimant had obtained advice from a Commission agent that amounts paid into an RRSP wouldn't be deducted from his benefits. Relying on that information, the claimant made an irrevocable decision to have their pension benefits paid into their RRSP. The Commission then informed the claimant that it had changed its interpretation and would be deducting those amounts from his benefits.

[86] The Federal Court of Appeal (FCA) held that any **commitment** given by the Commission to act in a manner that was contrary to the law was void and could not be enforced by the courts. The Supreme Court of Canada confirmed the FCA's decision.

[87] But the finding in the Granger case doesn't apply in this case.

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[23] See GD3-11.
[24] See *Granger v Canada Employment and Immigration Commission*, A-684-85 (FCA), where the Federal Court of Appeal confirms earlier caselaw to the effect that discretionary decisions shouldn't be made in a manifestly unjust manner.
[25] See *Granger v Canada Employment and Immigration Commission*, A-684-85 (FCA), confirmed by the Supreme Court of Canada in *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141.

[88] If the Commission had told the Appellant that she was entitled to receive 24 weeks of benefits and then only paid her for 20 weeks, it's clear that the Appellant wouldn't be able to claim the additional four weeks simply because an agent had told her she was entitled to them and because she had acted on that commitment. That's what the Granger case says.

[89] But that's not what happened here. In this case, the Commission didn't just make a commitment. It made a decision. Its decision was to pay the Appellant more weeks of benefits than the law says she's entitled to. The overpayment didn't occur because the Appellant relied on the Commission's commitment. It occurred because the Commission acted on it.

[90] By deciding that the Appellant's claim shouldn't have been reconsidered, I'm not setting aside the requirements of the law.

[91] I acknowledge that the law provides that parents can't receive more than 40 weeks of standard parental benefits between them. And I'm not saying that the Appellant is entitled to 24 weeks of benefits. She's clearly not.

[92] All that I'm saying is that the decision that the Commission made to pay the Appellant four weeks of benefits that she's not legally entitled to shouldn't have been revisited.

[93] Moreover, in the Granger case the FCA acknowledges that the result would have been different if the Commission's decision to revoke its initial interpretation had been discretionary.

[94] In this case, the decision made by the Commission to reconsider the claim was discretionary. So, the Granger case stands for the principle that the Commission shouldn't have reconsidered its initial decision, even if that decision was contrary to the law.

[95] The FCA rendered another more recent decision, confirming a decision of the AD, which suggests that a claimant can't ever be relieved of an overpayment that results from misinformation from the Commission (the Molchan case).[26]

[96] Although some may read it that way, I don't think the AD's decision, as confirmed by the FCA, creates a blanket rule to the effect that overpayments resulting from mistaken information provided by the Commission must stand.

[97] In the Molchan case, the claimant had been directed by the Commission to provide false information on her bi-weekly reports. The AD determined that even though the claimant had been misdirected by the Commission, the information she had provided was false, nonetheless. It said that the fact that the claimant had provided false information was enough to give rise to the reconsideration of her claim.[27]

[98] The FCA confirmed that the AD's conclusion was reasonable. In doing so, it cited a number of other decisions where claims were reconsidered. In all of the cases the FCA cites, the claimants had provided false or misleading information as a result of being misdirected by the Commission. And in all of these cases, the Commission was found to have acted judicially in reconsidering the claim <u>because the claimant had provided false or misleading information</u>.

[99] The Molchan case must be distinguished from the present case. Unlike in the Molchan case, and in the other cases cited by the FCA, the Appellant wasn't directed to provide, and didn't provide, false or misleading information in this case.

[100] Moreover, the overpayment in this case doesn't result from the fact that the Appellant was misinformed by the Commission. It results from the fact that the Commission mistakenly paid the Appellant benefits she wasn't entitled to and then reconsidered its decision to pay her those benefits.

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[26] See *Molchan v Canada (Attorney General)*, 2024 FCA 46, confirming *LM v Canada Employment Insurance Commission*, 2023 SST 139.
[27] This is in keeping with the Commission's reconsideration policy, which says that claims can be reconsidered when the Commission acts on false or misleading information.

[101] So, in my view, the Molchan case has no application here.

Conclusion

[102] The appeal is allowed.

[103] The Commission didn't act judicially when it reconsidered the Appellant's claim. It didn't consider all of the relevant facts in exercising its discretion.

[104] I find that the claim shouldn't be reconsidered. The Commission's decision to pay the Appellant four additional weeks of benefits stands.

[105] This means that the overpayment and the notice of debt must be set aside.

Elyse Rosen
Member, General Division – Employment Insurance Section