



Citation: *AB v Canada Employment Insurance Commission*, 2025 SST 269

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. B.

Respondent: Canada Employment Insurance Commission
Representative: Claude Germain

Decision under appeal: General Division decision dated December 17, 2024
(GE-24-3698)

Tribunal member: Solange Losier

Type of hearing: Teleconference

Hearing date: March 6, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: March 24, 2025

File number: AD-25-11

Decision

[1] The appeal is allowed. The matter will go back to the General Division for reconsideration.

[2] The General Division is directed to ask the Commission to obtain a Canada Revenue Agency (CRA) ruling on the number of insurable hours the Claimant had during his qualifying period from March 20, 2022, to March 9, 2024.

Overview

[3] A. B. is the Claimant in this case. He applied for Employment Insurance sickness benefits (benefits).

[4] The Canada Employment Insurance Commission (Commission) decided that he couldn't get benefits because he didn't have enough insurable hours during his qualifying period.¹

[5] The General Division concluded the same. It dismissed the Claimant's appeal, finding that he didn't have enough hours.²

[6] The Claimant argues that the General Division made several reviewable errors in its decision.³

[7] I have found that the General Division made an error of law.⁴ The General Division needed to ask the Commission to obtain a CRA ruling to make a determination on the number of insurable hours the Claimant had during the qualifying period.

¹ See Commission's initial decision and reconsideration decision at pages GD3-25 to GD3-26 and GD3-41 to GD3-42.

² See General Division decision at pages AD1A-1 to AD1A-6.

³ See Application to the Appeal Division at pages AD1-1 to AD1-14.

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

Preliminary matters

– The Claimant was permitted to submit two Tribunal cases after the hearing

[8] The Claimant referred to two Tribunal cases in his written arguments. However, I was not able to locate them with the information he provided, so I gave him a chance to submit them after the Appeal Division hearing took place.⁵

[9] The Claimant wrote back to the Tribunal identifying that he couldn't find one of the cases. He also submitted a summary of a different case.⁶ The submission was shared with the Commission. I asked the Commission to provide a reply by the deadline.

[10] The Commission replied, noting that it could not find the case the Claimant referred to but that he appears to be relying on a case involving a "violation."⁷ It submits that the violation is a separate issue and is not properly before the Tribunal.

– The violation on the Claimant's file is not under appeal

[11] At the Appeal Division hearing, the Claimant indicated that the Commission failed to notify him about a previous violation on his file from 2022.

[12] There is a copy of the Commission's violation decision from 2022 in the file (but only for the purposes of establishing that he had one and that he needed a higher number of hours to qualify for benefits).⁸ However, the Claimant hasn't asked the Commission to reconsider that decision.⁹

[13] This means I can't make any decisions about the previous violation imposed by the Commission in 2022 on his file.

⁵ See pages AD7-1 to AD7-3.

⁶ See pages AD8A-1 and AD8B-1 to AD8B-5.

⁷ See page AD9-1.

⁸ See decision dated September 16, 2022, at pages GD3-19 to GD3-21. The Claimant has not yet asked the Commission to reconsider that decision.

⁹ See section 112 of the EI Act.

[14] The only issue I can consider is the Commission's reconsideration decision dated September 19, 2024, that says the "benefit period was not established" [due to insufficient hours].¹⁰ That's the decision the Claimant appealed to the General Division on November 6, 2024.¹¹

[15] We discussed the violation at the Appeal Division hearing, I explained to the Claimant that he needs to ask the Commission to reconsider the previous violation decision (this is called a "**Request for Reconsideration**"). To do that, he can visit a Service Canada centre, submit a request online, or call them. Given that the violation was imposed in 2022, the Claimant may also need to discuss the lateness of his request with the Commission.

[16] To be clear, I can't make any decisions about the previous violation on his file from March 2022. He needs to follow up directly with Service Canada about that issue.¹²

Issues

[17] The issues in this appeal are:

- a) Did the General Division fail to follow a fair process?
- b) Did the General Division make an error of law by failing to apply the "benefit of the doubt provision" in section 49(2) of the *Employment Insurance Act* (EI Act)?
- c) Did the General Division make an error of law by failing to request a CRA ruling as noted in section 90(1)(d) of the EI Act?
- d) If so, how should the errors be fixed?

¹⁰ See decision under appeal at pages GD3-41 to GD3-42.

¹¹ See section 113 of the *Employment Insurance Act* (EI Act).

¹² See section 112 of the EI Act.

Analysis

– Did the General Division fail to follow a fair process?

[18] No. The Claimant's arguments about "fairness" all relate to how he was treated by the Commission. He hasn't pointed out how the General Division failed to follow a fair process.

[19] At the Appeal Division hearing, the Commission's representative apologized to the Claimant acknowledging that there was some confusion because they had mistakenly sent him a letter granting him benefits, but that it was sent in error.

[20] The Claimant's arguments about fairness are really about the Commission's alleged conduct and not about the General Division's process.

[21] I find that the General Division followed a fair process.¹³ I've reviewed the file and listened to the audio recording of the General Division hearing. The Claimant attended the hearing, and testified. The General Division asked him relevant questions throughout the hearing. He had a full and fair opportunity to present his case. There is no indication that it didn't follow a fair process here.

– Did the General Division make an error of law by failing to apply the "benefit of the doubt provision" in section 49(2) of the EI Act?

[22] No. The benefit of the doubt provision in section 49(2) of the EI Act is not applied by the General Division (or the Appeal Division).¹⁴

[23] The Claimant says that the General Division should have given him the benefit of the doubt. The Commission argues that section 49(2) doesn't apply in this case.

[24] Section 49(2) of the EI Act allows the Commission to give the benefit of the doubt to a Claimant when they are disqualified or disentitled from benefits because of misconduct or for voluntarily left a job.

¹³ See section 58(1)(a) of the DESD Act.

¹⁴ See *Chaoui v Canada (Attorney General)*, 2005 FCA 66.

[25] I find that the General Division did not make an error of law because section 49(2) of the EI Act is only applied by the Commission.¹⁵ This case is about the number of hours the Claimant has, it isn't about misconduct or voluntary leave, so the benefit of the doubt provision doesn't apply anyway.

– **Did the General Division make an error of law by failing to request a CRA ruling based on section 90(1) of the EI Act?**

[26] Yes. The General Division needed to ask the Commission to obtain a CRA ruling to determine the number of insurable hours of employment he had during the qualifying period.

[27] Section 90(1)(d) of the EI Act says that the CRA has exclusive jurisdiction to decide the number of insurable hours of employment a person has.

[28] The General Division decided that the Claimant's qualifying period ran from March 20, 2022, to March 9, 2024.¹⁶ It found that the Claimant had worked 812 hours of insurable employment during the qualifying period. It explained that the Claimant didn't dispute that fact, and noted that there was no evidence that made it doubt that.¹⁷

[29] The Claimant argues that the General Division made an error of law because it failed to get a CRA ruling, and that it should have done so. He explained that he wasn't aware at the time that CRA could "verify" his hours. In his view, he has more insurable hours than what was shown on his Records of Employment. He also thinks the Commission didn't calculate the number of hours he had in the qualifying period correctly.

[30] The Commission agrees that the General Division made an error because the Claimant said during the General Division hearing that he wasn't sure about his hours and he had to verify.

¹⁵ See section 58(1)(b) of the DESD Act.

¹⁶ See paragraphs 17–20 of the General Division decision.

¹⁷ See paragraphs 22–23 of the General Division decision.

[31] I listened to the audio recording from the General Division hearing to confirm what was discussed. The General Division asked the Claimant if he agreed whether he had 812 hours. The Claimant said he didn't know the exact number from memory and would need to confirm. He told the General Division that he had more hours, but that not all of them were used.¹⁸

[32] I find that the General Division made an error of law by failing to obtain a CRA ruling on the number of insurable hours of employment the Claimant had from March 20, 2022, to March 9, 2024.¹⁹ There was some evidence to doubt the number of hours he had because he testified that he had to "verify" his hours. As a result, a CRA ruling was needed before making a finding of fact that the Claimant didn't have enough hours to qualify for benefits.

– **The Claimant submitted a case, but it doesn't stand for what he says it does**

[33] In his written arguments to the Appeal Division, the Claimant identified that there were two Tribunal cases that supported his position. He referred to the following cases:

- *IA v Canada Employment Insurance Commission*
- *MV v Canada Employment Insurance Commission*

[34] As noted above, I asked the Claimant to provide the Tribunal with copies of the Tribunal cases because I couldn't find them based on the limited information he provided. The Claimant agreed to provide them after the Appeal Division hearing, so I gave him time to do that.

[35] The Claimant replied to my request, but he didn't provide copies of the Tribunal cases he referred to. Instead, he provided his own summary of a different decision called "*Canada (Attorney General) v Bellefleur*" dated "January 15, 2021."²⁰

[36] He says that the *Bellefleur* decision overturned the denial of benefits based on insufficient hours when a person was not notified of a violation on their record. He

¹⁸ See audio recording of the General Division hearing from 23:17.

¹⁹ See section 58(1)(b) of the DESD Act.

²⁰ See pages AD8B-1 to AD8B-5.

submits that the case highlights the importance of proper notification and accurate recording keeping in determining eligibility for benefits.

[37] First, the Claimant did not provide a copy of the case but only his summary of the case. I would also add that the violation issue is not before me. Even so, I looked for the *Bellefleur* decision he referenced above, but I couldn't find it as cited.

[38] However, I did find a decision from the Federal Court of Appeal with the same surname. The full citation is *Bellefleur v Canada (Attorney General)*, 2008 FCA 13—decision dated January 11, 2008. That case involved another person who was denied EI benefits because he didn't accumulate enough hours. So, he got a Record of Employment (ROE) from his brother-in-law for the number of hours he was short.

[39] The main principle from the *Bellefleur* case was that decision makers (former Board of Referees) must justify its determinations and where there is contradictory evidence, it must decide which contradictory evidence it prefers and must provide reasons why it prefers certain evidence.²¹

[40] Based on my own review, the *Bellefleur* decision doesn't stand for what the Claimant says it does and isn't relevant anyway. The Claimant didn't submit copies of the other two Tribunal cases he referred to, so I didn't consider them.

[41] Since I've already found that the General Division made an error of law, I must now consider how to fix that error.

Fixing the Error

[42] There are two options for fixing an error by the General Division. I can either send the file back to the General Division for reconsideration or give the decision that the General Division should have given.²²

[43] The Claimant wants me to substitute with my own decision. He wants me to decide that he has enough hours to get benefits. That's his preferred option. In the

²¹ See *Bellefleur v Canada (Attorney General)*, 2008 FCA 13, at paragraph 3.

²² See section 59(1) of the DESD Act.

alternative, he says that the file could go back to the General Division for reconsideration to start the process over. He now says he isn't sure if a CRA ruling is needed.

[44] The Commission says that if a CRA ruling is needed, the file should go back to the General Division for reconsideration. In the alternative, if a CRA ruling is not required, then it says that I could substitute it with my own decision.

– I am returning the matter to the General Division for reconsideration

[45] The record is not complete in this case. The Claimant clearly disputes the number of hours he had on ROEs and the Commission's calculation of those hours during the qualifying period. Only a CRA ruling can determine this.

[46] This file will return to the General Division for reconsideration with instructions to obtain a CRA ruling on the number of insurable hours the Claimant has during his qualifying period.

[47] I've expedited this decision. The Claimant expressly asked me to expedite it for financial hardship reasons. However, I would note that the next steps may take some additional time, especially since a CRA ruling is required for this case.

Conclusion

[48] The Claimant's appeal is allowed. The matter will go back to the General Division for reconsideration.

[49] The General Division is directed ask the Commission to obtain a CRA ruling on the number of hours the Claimant had during his qualifying period—which ran from March 20, 2022, to March 9, 2024.

Solange Losier
Member, Appeal Division