



Citation: *RJ v Canada Employment Insurance Commission*, 2025 SST 384

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	R. J.
Respondent:	Canada Employment Insurance Commission
Representative:	Stephanie Tollefson

Decision under appeal:	General Division decision dated December 17, 2024 (GE-24-3750)
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Tribunal member:	Stephen Bergen
Type of hearing:	Teleconference
Hearing date:	March 21, 2025
Hearing participants:	Respondent's representative
Decision date:	April 15, 2025
File number:	AD-25-26

Decision

[1] I am dismissing the appeal.

[2] The General Division made an error of jurisdiction. It failed to consider whether the Commission had acted judicially when it chose to reconsider its decision.

[3] As a result, I am substituting my decision for that of the General Division. However, I have reached the same result. I find the Commission acted judicially when it reconsidered the Claimant's parental benefits, so it was entitled to do so.

[4] I have not found any error in how the General Division's decided that the Commission was correct that the Claimant was not entitled to the 12 weeks of extended parental benefits that she was paid. She was entitled only to four weeks of standard parental benefits.

Overview

[5] R. J. is the Appellant. I will call her the Claimant because this application is about her claim for Employment Insurance (EI) parental benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[6] The Claimant's baby was born on October 26, 2022. Her spouse applied for standard parental benefits in January 2023 and he received 35 weeks of parental benefits at the standard benefit rate. The Claimant applied for parental benefits for the same child in September 2023, but she applied for the extended benefit. The Commission paid her 12 weeks of benefits at the reduced extended rate.

[7] The Commission reconsidered its decision on May 14, 2024, when it realized that the Claimant had chosen a different form of benefit than had her spouse. It decided that she should have been paid according to her spouse's election of standard benefits. This meant that the Claimant was not entitled to the 12 weeks of extended parental benefits that she had been paid. In addition, the window in which the Claimant could have received the standard parental benefit closed on October 28, 2023. This meant she

could only receive the standard parental benefit up to that date. On May 25, 2024, the Commission sent her a notice of debt because it had overpaid parental benefits.

[8] The Claimant asked the Commission to reconsider once more, but it would not change its decision. The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal), which dismissed her appeal. She next appealed the General Division decision to the Tribunal's Appeal Division.

[9] I am dismissing the Claimant's appeal. I agree that the General Division made an error of jurisdiction by failing to consider whether the Commission acted judicially when it reconsidered its payment of parental benefits. As a result, I have made the decision the General Division should have made.

[10] I find that the Commission acted judicially. I also find that the General Division had jurisdiction to consider the issue of the Claimant's entitlement to extended benefits.

[11] The General Division made no error in finding that the Commission correctly calculated the Claimant's entitlement to standard benefits.

Preliminary matters

The Claimant did not participate in the hearing

[12] The Appeal Division hearing was scheduled for March 21, 2025. The Commission attended the hearing, but not the Claimant. When the Claimant failed to join the teleconference, the Tribunal contacted her to assist her to connect. The Claimant told the Tribunal that she would not be participating in the oral hearing and invited the Appeal Division to make the decision on the basis of her written submissions.

[13] The hearing continued in the absence of the Claimant. The Commission explained its position on the General Division's error and what it believed the Appeal Division should do to remedy the error. It explained why the Appeal Division should make the decision and why it should ultimately dismiss the appeal.

[14] After the hearing, I arranged for a copy of the audio recording of the hearing to be sent to the Claimant, and I offered her a final opportunity to provide a written response. The Claimant did not respond.

Issues

[15] The issue in this appeal is as follows:

- a) Did the General Division make an error of jurisdiction by failing to consider whether the Commission acted judicially when it reconsidered the Claimant's entitlement to weeks of extended benefits?
- b) Did the General Division make an error of jurisdiction by considering whether the Commission correctly calculated her entitlement to standard benefits?

Analysis

General legal principles applicable to the appeal

[16] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division made an error of law when making its decision.
- d) The General Division based its decision on an important error of fact.¹

Error of jurisdiction

- Did the General Division consider whether the Commission acted judicially?

[17] In her application to the Appeal Division, the Claimant selected the ground of appeal concerned with an error of jurisdiction. An error of jurisdiction is where the

¹ This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

General Division makes a decision it is not authorized to make, or where it fails to make a decision that it is required to make.

[18] She argued that the Commission had not acted with due diligence or processed her application appropriately. In her view, it was unfair for the Commission to reconsider her decision and to ask her to repay the benefits she received. When she appealed to the General Division, she argued that the Commission needed to take some responsibility for its own mistake.

[19] The Commission decided that it had overpaid the Claimant's parental benefits by paying her 12 weeks of extended parental benefits. It said that the Claimant should have been paid standard parental benefits because her husband had already selected standard benefits.

[20] This decision was actually a reconsideration of its prior decision to pay the Claimant the extended benefits. The overpayment results from the Commission's reconsideration on its own initiative.

[21] Except where there has been a false or misleading statement, the Commission may only reconsider its own decision within 36 months of the date the benefits were paid or payable.² The Commission reconsidered within about five months of the last benefit payment it made so it was lawfully authorized to reconsider.

[22] However, the Commission is not **required** to reconsider unless it receives a request for reconsideration. When it reconsiders benefits on its own initiative, it is making a discretionary decision. Such decisions must be made in a "judicial" manner. This means that the Commission cannot act improperly or in bad faith, or in a discriminatory manner. It also means that it must consider all the relevant factors, and that it must not consider factors that are not relevant.³

² See section 52(1) of the *Employment Insurance Act* (EI Act).

³ See *Suresh v Canada (minister of Citizenship and Immigration)*, 2 FC 592; *Canada (Attorney General) v Purcell*, 1995 CanLII 3558.

[23] The Claimant questioned the manner of the Commission's reconsideration. She argued that it was unfair that the Commission have paid her benefits but later tried to claw them back because of its own mistake.

[24] In such a case, the General Division has an obligation to consider whether the Commission acted judicially. The issue of whether it has done so is implicit whenever the Commission chooses to reconsider decisions on its own initiative (and reconsiders within the time limitation). The Commission's reconsideration decision is invalid if it did not act judicially.

[25] The General Division did not analyze whether the Commission acted "judicially," when it reconsidered the Claimant's parental benefit entitlement. There is no indication in the decision that the General Division was even aware that the Commission had employed a discretionary power to reconsider the Claimant's benefits. The Appeal Division has previously found that the General Division makes an error of jurisdiction when it fails to consider this question.⁴

[26] In its submissions, the Commission concedes that the General Division made an error of jurisdiction. I agree with the Commission.

[27] I find that the General Division should have considered whether the Commission acted judicially, and that it made an error of jurisdiction when it failed to do so.

– **Was it an error for the General Division to consider whether the Commission correctly calculated her entitlement to standard benefits?**

[28] An error of jurisdiction is where the General Division fails to make a decision that it is required to make, or where it makes a decision that it is not authorized to make. The General Division is required to consider all the issues that are on appeal.

[29] The Commission's reconsideration decision is the only kind of decision that is appealable. The General Division was required to consider all the issues arising from the reconsideration decision.⁵ And it had no jurisdiction to decide any other issues.

⁴ See for example, *MS v Canada Employment Insurance Commission*, 2022 SST 933; *PM v Canada Employment Insurance Commission*, 2022 SST 931.

⁵ See section 113 of the EI Act.

[30] The Claimant argues that the General Division should not have decided whether the Commission correctly calculated the Claimant's entitlement to standard benefits. She says that this was not the issue at all. Her concern had been with how the Commission reached its decision.

[31] I have already found that the General Division did not consider whether the Commission acted judicially. However, the General Division did not make an error of jurisdiction by considering whether the Commission had correctly calculated her entitlement to standard benefits.

[32] The substantive issue in the Commission's reconsideration decision had to do with parental benefits. The Commission maintained (or would not change) its earlier decision that it could not pay her the 12 weeks of benefits she had requested. It said that her spouse had chosen standard benefits so she could not receive extended benefits.

[33] After the Claimant requested a reconsideration, the Commission explained its decision in more detail. It explained that she could only receive the standard benefit and also told her that the standard benefit had a window of only one year from the date of her baby's birthdate. It told her she could only collect standard benefits up to October 26, 2023.

[34] The type of benefit, and the period in which she could collect that benefit, were issues in the appeal that the General Division needed to decide. The General Division summarized the issues as whether the Commission correctly calculated her entitlement to EI standard parental benefits. It was not an error for it to do so.

Summary

[35] I have found that the General Division made an error of jurisdiction. The General Division should have decided if the Commission acted judicially.

[36] Now I have to decide what I should do about that error.

Remedy

[37] I have the power to send the matter back to the General Division to reconsider, or I may make the decision that the General Division should have made.⁶

[38] The Commission asks that I make the decision the General Division should have made. It suggests that I should find that the Commission acted judicially and dismiss the appeal.

[39] I agree that I can make the decision. Although the General Division did not address whether the Commission acted judicially, there is no new evidence to be considered, and the parties have now made their arguments.

Did the Commission act judicially?

[40] There is no evidence on which I might find that the Commission acted in bad faith, with an improper purpose, or in a discriminatory fashion.

[41] The question in this case is whether the Commission considered the relevant factors when it reconsidered, and did not consider irrelevant ones.

[42] The law doesn't tell the Commission what factors it should consider. The Tribunal's Appeal Division has said that the Commission should consider factors that favour finality (claimants should be able to rely on Commission decisions) or accuracy (mistakes and misrepresentations should be corrected).⁷ The Appeal Division said the Commission should not consider the claimant's personal factors—such as the ability to pay or stress.

[43] The Commission has developed a policy which outlines those factors which it considers relevant.⁸ The Appeal Division has previously held that the Commission's policy is a relevant factor.

[44] The Commission's policy requires consideration of whether

⁶ See section 59(1) of the DESDA.

⁷ See *Canada Employment Insurance Commission v MA*, 2022 SST 1018.

⁸ See Chapter 17.3.3 (Reconsideration Policy) of the *Digest of Benefit Entitlement Principles*.

- benefits have been underpaid;
- benefits were paid contrary to the structure of the Act (which includes the conditions for special benefits, such as parental benefits);
- benefits were paid as a result of a false or misleading statement;
- the claimant ought to have known there was no entitlement to the benefits.

[45] The Commission argues that it used its discretion judicially because it correctly applied its reconsideration policy. It focused on the part of the policy which states that it may reconsider a claim when benefits have been paid contrary to the structure of the Act, even if an overpayment results. This was the reason that it decided to reconsider the benefits it had paid the Claimant.

[46] The law allows parents to split parental benefits, but it stipulates that both parents must receive the same kind of parental benefit.⁹ The Claimant's spouse had applied for the standard parental benefit and received the maximum of 35 weeks of benefits. Under the law, she and her spouse could receive up to 40 weeks between them, so the Claimant could potentially claim another five weeks of standard benefits.

[47] The Claimant applied for 28 weeks of extended parental benefits and received 12 weeks. However, she could not receive extended benefits under the law: She could only receive standard benefits. Furthermore, claimants are only entitled to receive parental benefits within their benefit period. The length of the benefit period depends on whether standard or extended benefits are paid. Because the Claimant could only receive standard parental benefits, she would have to receive them within the window for that kind of benefit.¹⁰ She could not receive standard parental benefits later than 52 weeks from the birth of her child, which was October 28, 2023.¹¹ This meant that the Claimant could only receive four out of the five weeks of the standard parental benefits to which she would have been entitled otherwise.

⁹ Section 23 (1.3) of the EI Act.

¹⁰ See section 23(2) of the EI Act.

¹¹ See section 12(4)(b) of the EI Act.

[48] Because the Commission was not authorized by law to pay the Claimant extended parental benefits, or to pay her parental benefits beyond October 28, 2023, the Commission determined that it had paid her benefits contrary to the structure of the *Employment Insurance Act* (EI Act).

[49] The specific part of the Commission's policy that says the Commission will consider "whether benefits are paid contrary to the structure of the act," is not the only factor relevant to whether the Commission should reconsider a decision. Neither is the Commission's policy comprehensive of all factors that may be relevant.

[50] Nonetheless, it is profoundly relevant whether the paid benefits were actually authorized by the EI Act. And there is little information on the record to suggest that there were other relevant factors that should have been considered, but were not.

[51] The Commission understood that it initially paid the Claimant extended parental benefits because it mistakenly approved the benefit that she had elected in her application. The Commission's reconsideration file documents how the Commission tried to call the Claimant to inform her of its reconsideration. Notes of that attempt describe its reasons for reconsidering. They indicate that the Commission realized that the Claimant's spouse had already selected the standard parental benefit, when she could only receive the standard benefit under the law.¹²

[52] Based on my review of the Commission's reconsideration documents and its reconsideration policy, I find it's more likely than not the Commission used its discretion judicially.

[53] This means I cannot interfere with the Commission's decision to reconsider the Claimant's claim.

¹² See GD3-19.

Conclusion

[54] The appeal is dismissed. The General Division failed to decide whether the Commission acted judicially, so it made an error of jurisdiction.

[55] I have corrected this error by considering whether the Commission acted judicially, but I have found that it did. This means that the decision result does not change.

Stephen Bergen
Member, Appeal Division