



Citation: *AC v Canada Employment Insurance Commission*, 2026 SST 147

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. C.

Respondent: Canada Employment Insurance Commission
Representative: Nikkia Janssen

Decision under appeal: General Division decision dated September 19, 2025
(GE-25-2378)

Tribunal member: Stephen Bergen

Type of hearing: In person

Hearing date: January 28, 2026

Hearing participants: Appellant
Respondent's representative

Decision date: March 2, 2026

File number: AD-25-689

Decision

[1] The appeal is allowed. The General Division made an error of jurisdiction because it failed to decide whether the Commission acted judicially

- in its March 30, 2024, Notice of Debt, by reconsidering benefits paid to the Claimant as a result of its change to her benefit period extension from 10 weeks to 24 weeks, and;
- in its October 17, 2024, response to the Claimant's reconsideration request, when it went beyond her request and reconsidered its decision to grant the initial 10-week benefit period extension.

[2] I am returning the matter to the General Division for reconsideration.

Overview

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

[4] The Claimant applied for EI benefits on May 10, 2023, and the Commission established her claim as of May 7, 2023. The Claimant received a severance payment due to her separation from employment, which the Commission allocated in the initial weeks of her claim. At the same time, the Commission extended her benefit period by 10 weeks because she was not entitled to benefits for much of the allocation period.

[5] On June 1, 2023, the Claimant later asked for an antedate of her claim to March 26, 2023, to which the Commission agreed.¹ On August 11, 2023, the employer confirmed to the Commission that the Claimant was also entitled to vacation pay. The Commission allocated the vacation pay in September 2023, in the same way as her severance. This reallocation resulted in an overpayment, and a Notice of Debt for

¹ See RGD3-7.

\$1,128.00. The Claimant asked the Commission to reconsider this overpayment, and it reversed it. It accepted that it had not reconsidered the Claimant's benefits in a proper manner.

[6] The Claimant received another Notice of Debt on January 27, 2024, in the amount of \$1,311.00 and a second Notice of Debt on March 30, 2024, for \$5,471.00. Each of these notices followed recalculations by the Commission. The first one followed the Commission mistakenly changing the start date of her claim back to May 7, 2023. The second one resulted from the Commission mistakenly changing her benefit period extension from a 10-week extension to a 24-week extension.

[7] On June 10, 2024, the Claimant requested a review of her overpayment. While the Commission was considering this request, it permitted the Claimant to retroactively refuse payment of the partial benefits that—according to its changes—would have been payable during a corrected allocation of the separation amounts.² The Commission allowed the Claimant to claim those weeks of benefits later in her benefit period when she could receive full benefits instead of partial. This reduced the amount that the Commission would ultimately ask the Claimant to repay.

[8] The Commission issued a Notice of Debt on September 21, 2024, for \$13,680.00, and another Notice of Debt on September 28, 2024, for \$4,528.00. It appears that the second one was meant to replace (and not supplement) the first one, and that it resulted from inputting the Claimant's refusal of partial benefit payments.³

[9] All of this occurred before the Commission finally made the decision on the Claimant's request for reconsideration, which was on October 17, 2024. The Commission's reconsideration decision said that it was changing its earlier decision. It decided that the Claimant's benefit period extension should be reduced from 24 weeks to zero weeks.

² See GD3-68.

³ See ADN5-5.

[10] The Claimant appealed the October 17, 2024, decision to the General Division of the Social Security Tribunal. On April 2, 2025, the General Division allowed the Claimant's appeal (In file GE-24-3744). The General Division member understood the overpayment represented by the March 30, 2024, Notice of Debt to be a discretionary reconsideration of the benefits paid to her.⁴ And it decided that the Commission had not exercised its discretion judicially. Because of this finding, the General Division did not consider the Commission's reasons for declaring the overpayment.

[11] The Commission appealed to the Appeal Division. On August 5, 2025, the Appeal Division allowed the Commission's appeal and returned the matter to the General Division. It did not address the General Division's finding that the Commission had not acted judicially when it decided the Claimant had been overpaid. The Appeal Division allowed the appeal because the General Division failed to consider, as a preliminary matter, whether the Claimant was out of time to bring her appeal of the November 21, 2023, reconsideration decision. It also said that the General Division had failed to consider the benefit period extension issue arising from the October 17, 2024, decision.

[12] Because the Appeal Division returned the matter to the General Division, the General Division held another hearing which resulted in the September 19, 2025, decision, which is now on appeal (GE-25-2378).

[13] This second General Division panel noted that that the Commission had already accepted that it acted injudicially when it reconsidered on November 21, 2023, and that the Claimant did not want to appeal that decision. Therefore, it decided it did not need to consider the associated late appeal issue—which was one of the two reasons the Appeal Division had returned the matter.

[14] It also decided that it had no jurisdiction to consider how the Commission had agreed to let the Claimant refuse partial payments. It said that it could not consider the

⁴ The reconsideration that follows a party's request for reconsideration is authorized by section 112 of the EI Act. When the Commission reconsiders at its own initiative, it is making a discretionary decision under section 52 of the EI Act.

issue of whether the Claimant should have to repay the benefits to which she was not entitled. And it decided that it did not have the authority to consider a write-off (but it made a non-binding recommendation that the Commission consider a write-off—which is apparently in-process). The Claimant has not argued that the General Division made an error in any of these decisions.

[15] The Claimant appealed this General Division decision to the Appeal Division because she disagreed with another part of the General Division decision: The General Division had decided that the Commission was correct to remove the benefit period extension, and that the Claimant was not entitled to the benefits she received during the extension.

Issue

[16] The issues in this appeal are:

- a) Did the General Division act unfairly by
 - i. Not explaining the law?
 - ii. Not accounting for the Claimant's barriers
 - iii. Not considering the effect of the Commission's mistakes?
 - iv. Not giving sufficient reasons?
- b) Did the General Division make an error of jurisdiction by failing to consider whether the Commission acted judicially?
- c) Did the General Division make an error of fact by failing to consider the employer's mistakes or the Commission's mistakes.

Analysis

General legal principles for appeals to the Appeal Division

[17] 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.⁵

Procedural fairness

[18] The Claimant argued that the General Division decision was procedurally unfair.

– Claimant’s comprehension

[19] In her leave to appeal application, the Claimant argued that she was unable to understand the Commission’s decision process or to identify “errors of law” within the General Division decision.

[20] I acknowledge that the Claimant may have had difficulty understanding how to challenge the elimination of her benefit period extension and any overpayments that arose because of it. It is not easy to see how a change to her benefit rate could affect her benefit period extension decision, or the benefits to which she was entitled.

[21] The General Division decision must itself be comprehensible. However, the General Division is not obligated to confirm the Claimant’s understanding of every intricacy of the law. Fairness does not require the General Division to instruct the Claimant on the precise mechanism by which the various adjustments produced the overpayment.

[22] The General Division member led the Claimant through the Commission’s decisions and their impact on her benefits. The member explained to the Claimant that her overpayment resulted from adjustments to her benefit rate and the extension of her benefit period, and it offered the Claimant an opportunity to respond.⁶ And the

⁵ 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).

⁶ Listen to the audio record of the General Division hearing at timestamp 1:11:45.

Commission's submissions set out the legislative provisions that guided its decisions, and provided additional explanation for how they operated in her case.⁷

[23] The Claimant was given sufficient information and explanation that she could have understood the case that she had to answer.

[24] I acknowledge that the Claimant is or was 72 years old and that English is her second language. She has said that she does not read English. And I accept that this made it more difficult for her to follow what was happening with her file, and to advance her appeal.

[25] However, she still had a fair opportunity to be heard. The Tribunal did what it could to accommodate her. She asked for an interpreter and an in-person hearing and was provided both. As far as her ability to read the documents in English, I note that the Claimant called the Tribunal more than once to ask when or how she would receive the disclosure documents to prepare for the hearing. There is no record that she informed the Tribunal that she could not read the documents, or that she asked for help.

– **Commission errors**

[26] The Claimant also argued that the Commission made multiple mistakes and corrections, which was true. This would have made it even more difficult for her to understand how the overpayment was calculated.

[27] However, procedural fairness is concerned with the fairness of the process at the General Division only. The many errors and corrections of the Commission may have seemed unfair to the Claimant, but the Commission's actions cannot establish an error in the General Division decision.

– **Adequacy of reasons**

[28] The Claimant also argued that the General Division decision was unfair because its reasons were not clear. This might be considered as either an error of procedural

⁷ See GD4-10 to GD4-12; See also GD4-7 to GD4-8.

fairness or as an error of law. I will consider it under fairness, since the Claimant did not assert that the General division made an error of law.

[29] This was a technical case with a complex claim history, effectively summarized by the General Division decision to include the various Commission decisions and their effects.

[30] In asserting this error, the Claimant relied on what I said in my reasons for granting leave to appeal decision. In my leave to appeal decision, I noted that the means by which the Commission calculated the benefit rate was complicated and that it was not clear how the calculation was done. More precisely, the General Division did not detail the means by which an increased benefit rate affected the Claimant's benefit period extension.

[31] However, the grant of leave to appeal means only that I am willing to hear arguments. It does not mean that I have accepted, or will accept, those arguments.

[32] While the General Division may not have identified every step in how it progressed from an increase in the Claimant's benefit rate to the elimination of her benefit period extension, I agree with the Commission that it did not act unfairly or make an error of law.

[33] The General Division's reasons identified the essential piece. The member explained that an increased benefit rate meant she was entitled to partial weeks of benefits in her allocation period and that this meant she did not qualify for the extension of her benefit period. It also identified the applicable law by which the mechanism might be understood.

[34] The reasons are sufficient. They are not so unclear as to be unfair, and they do not amount to an error of law.

[35] The General Division did not act in a way that was procedurally unfair.

Jurisdiction

[36] The Claimant argued that the General Division failed to “appropriately consider the Commission’s discretion,” characterizing this as an error of jurisdiction.⁸ She also said that the Commission violated its own reconsideration policy.

[37] As I understand it, the Claimant is arguing that the General Division did not consider whether the Commission exercised its discretion properly when it reconsidered her benefits.

[38] Whenever the Commission makes a discretionary decision, such as when it reconsiders a decision at its own initiative, it must act judicially. “Acting judicially” means acting in good faith and without an improper purpose. It means not acting in a discriminatory fashion. And it means having regard to all the relevant factors and disregarding irrelevant factors.

[39] The Commission’s position is that the General Division was not required to consider whether it had exercised its discretion judicially when it corrected the benefit period extension. The Commission says it was not making a discretionary decision to reconsider under section 52 of the *Employment Insurance Act* (EI Act). It says it was responding to the Claimant’s request for reconsideration under section 112 of the EI Act, so it had no choice but to reconsider her overpayment of benefits.

[40] I will consider first whether the Commission was making a discretionary decision when it assessed the overpayment. However, in view of the Commission’s arguments, I will also look at whether its response to the Claimant’s request was properly a response under section 112, or a discretionary reconsideration under section 52. Then I will decide if the General Division made an error of jurisdiction.

⁸ See ADN01.

– **What was the decision that the Claimant wanted the Commission to review?**

[41] The Claimant requested a reconsideration on June 10, 2024. Her request said she was disputing the Commission's decision that she "owe[d] money." Her request form referred to a decision of May 11, 2024.

[42] The reconsideration decision of October 17, 2024, was the Commission's response. It purported to review an original decision of May 11, 2024. The decision framed the issue as "extension of benefit period."

[43] However, the reconsideration decision must have taken the date of the original decision from the Claimant's reconsideration request because there is no May 11, 2024, decision on the reconsideration file. The March 30, 2024, Notice of Debt in the amount of \$5,471.00 was the most recent record resembling a decision at the time the Claimant requested the reconsideration. The Notice of Debt stated that the debt was a consequence of an "internal adjustment." This would presumably be the adjustment to the Claimant's benefit period from 10 weeks to 24 weeks.

[44] The Claimant later discussed her reconsideration request with the Commission. She told the Commission that she had spoken to another agent about the Notice of Debt. She said she received the Notice of Debt on May 11, 2024, but that she could not remember the date of the conversation. It is clear that the Claimant requested the reconsideration because she did not agree she should have to repay the \$5,471.00 represented by the March 30, 2024, Notice of Debt.

[45] The Commission had earlier issued a separate Notice of Debt in January 2024 for \$1,311.00. That notice states on its face that the debt was the result of a change in the commencement date. The Commission had increased the Claimant's benefit rate from \$531.00 to \$532.00 because it received new earnings information. At the same time, it changed the start date of the claim from March 26 to May 7, 2023, which created the overpayment for benefits paid between March 26, 2023, and May 7, 2023. The Commission acknowledges that the January 2024 Notice of Debt was calculated in error.

[46] The Claimant did not ask the Commission to reconsider this debt, or otherwise respond to the January 2024, Notice of Debt in either her request for reconsideration or in her later discussions with the Commission.

[47] I am not sure whether the Commission has provided a sufficient explanation for this earlier debt. However, it is obvious that the Commission generated the January 2024 Notice of Debt for a reason that was unrelated to the March 30 Notice of Debt (which flowed from its extension of the benefit period from 10 to 24 weeks).

[48] I accept that these are separate debts arising from separate decisions on different dates, and that they each arose as the result of a separate and different mistake. The Claimant did not ask for a reconsideration of the \$1,311.00 Notice of Debt. Even if I found that her June 10, 2024, request for review of her “overpayment” was broad enough to include the overpayment from the January 27, 2024, Notice of Debt, she would have been out of time to request a review of that decision.⁹ There is no indication that she asked for an extension of time or that the Commission turned its mind to whether it should allow a review out of time of the January Notice of Debt.

[49] The Claimant’s request for review was a request for the Commission to reconsider the \$5,471.00 overpayment that resulted from the Commission’s “internal adjustment.”

– **Was the March 30 Notice of Debt a discretionary reconsideration?**

[50] The Commission effectively reconsidered benefits it had paid to the Claimant when it issued the March 30 Notice of Debt.

[51] The Commission acknowledged that the overpayment was the result of the fact that it increased her benefit period extension from 10 weeks to 24 weeks. It offered no legal or factual justification for increasing the benefit period extension. It was simply a mistake. Because of that mistake, the Commission, or its automated system, decided that the Claimant was not entitled to certain benefits she had received.

⁹ See section 112(1) of the EI Act.

[52] I note that the Claimant had earlier sought a reconsideration of a prior \$1,128.00 overpayment. This earlier overpayment was the result of a September 2023 extension to her allocation period. The Commission believed, at that time, that the Claimant was not entitled to the weeks of benefits that she had received during the additional part of the allocation period (that resulted from including her vacation pay in her separation earnings). In response to the Claimant's reconsideration request, the Commission recognized that it had reconsidered injudicially and reversed the overpayment.

[53] The Commission did not grant the extension of the benefit period from 10 to 24 weeks because of the Claimant's request for it to reconsider the September \$1,128.00 overpayment. The \$1,128.00 Notice of Debt was an entirely different issue from the issue that resulted in the March 30 overpayment.

[54] The March 30 overpayment resulted from the Commission's mistake in increasing her benefit extension to 24 weeks. The Commission had originally granted the Claimant the 10-week benefit period extension to correspond to a 10-week period in which the Commission had decided she was not entitled to benefits by reason of income from her separation from employment. When it increased the extension to 24 weeks, this had the retroactive effect of disentitling the Claimant to benefits for a corresponding period. This included some weeks in which she had received benefits. And this is what caused the overpayment.

[55] So, the March 30 Notice of Debt arose when the Commission reconsidered weeks of benefits that it had already paid. But the Claimant had not asked for this. The Commission reconsidered on its own initiative.

[56] So, this was a section 52 reconsideration. And the Commission was required to act judicially.

– **Did the Commission's October 17, 2024, response to the Claimant's reconsideration request, go too far?**

[57] The Commission made a second discretionary reconsideration when it responded to the Claimant's request for reconsideration.

[58] The Claimant filed her request for reconsideration on June 10, 2024. She indicated that the decision she would like reconsidered is “that {she} owe{s} money—overpayment.”

[59] The Commission responded by conducting a comprehensive review of the claim file, including its previous decisions, with the apparent intention of establishing whether the Claimant had been overpaid—all things considered.¹⁰

[60] As discussed, the Commission confirmed that it had made a mistake when it extended her benefit period from 10 weeks to 24 weeks. However, the Commission’s review went further. It did not simply restore the 10-week benefit period extension in response to the Claimant’s reconsideration request. Its October 17, 2024, decision determined that the Claimant should not have received any benefit period extension at all. The Commission reduced her benefit period from 24 weeks to zero weeks.

[61] The Commission’s decision does not explain how eliminating the Claimant’s benefit period extension affects her benefits or overpayment, but it changes almost everything. The overpayment in the March 30, 2024, Notice of Debt was related to benefit payments to the Claimant at the front end of the claim, during the period in which the Commission’s mistake would have disentitled her to benefits. So, the Claimant’s reconsideration request, was challenging her disenitment to benefits already paid.

[62] The Commission’s October 17, 2024, reconsideration decision would have restored the Claimant’s entitlement to the benefits represented by the Notice of Debt and confirmed her entitlement to benefits even during the original 10-week allocation of separation payments. However, it effectively disentitled her to weekly benefit payments that she received later in the claim—most of which would not have been paid by the time she asked the Commission to reconsider. It is hard to imagine that the Claimant was seeking a reconsideration of her future entitlement to benefits.

¹⁰ It told the Claimant that a “full review is performed on the claim, back to the beginning.” See GD3-68.

[63] It might be useful to briefly review what happened over the course of the file to affect the benefit period extension, and why the Commission decided she should not have received any benefit period extension at all.

Background to Commission's reconsideration

[64] When the Commission first understood that the Claimant had received severance, it granted a 10-week benefit period extension. This was because it allocated the severance at her normal weekly earnings of \$729.00 over 10 weeks. But then it learned she had also received vacation pay, so it increased her employment earnings by the amount of the vacation pay.

[65] This caused the Commission to recalculate her claim in September 2023.

[66] First, the Commission increased the Claimant's benefit rate. The inclusion of the Claimant's vacation pay increased her total earnings, and the Commission increased her benefit rate; accordingly, from \$535.00 to \$631.00.

[67] Second, the Commission allocated the increased earnings amount at \$729.00 per week until they were fully allocated. This extended the period over which her earnings were allocated.

[68] The Commission made no other change at the time. **It did not recalculate whether the Claimant should be entitled to receive benefits during the allocation of separation payments. It did not vary or eliminate the benefit period extension of 10 weeks when it adjusted her wage rate.** The claim proceeded as though the allocation of the severance and vacation pay fully offset the Claimant's normal weekly earnings, and as though the Claimant was not entitled to benefits during the allocation.

[69] The EI Act sets out some formulas which dictate whether a claimant is entitled to any part of their benefits during the allocation of their separation earnings. If the Claimant's increased earnings had been considered, she would have been entitled to at least partial benefit payments. This would mean that her initial weeks of unemployment (during the allocation) would have been weeks in which "benefits would otherwise be

payable.”¹¹ As a result, she would have served her waiting period immediately.¹² After she served her waiting period, she would have been entitled to some portion of her weekly benefits until her separation payments had been fully allocated.

[70] The EI Act calculates her benefit payments this way: It says that approximately 50% of her earnings would be deducted from her regular benefit rate, and that she would be entitled to be paid the balance.¹³ If the Commission had properly considered the effects of the Claimant’s adjusted earnings rate—together with her earnings from separation—it would have found that she was entitled to partial benefits in the weeks in which her separation earnings were allocated.

[71] The EI Act also says that a claimant’s benefit period is extended by the number of weeks, in their benefit period, that they can show they were **not entitled** to benefits because they received separation earnings.¹⁴ If the Commission had fully accounted for the adjustment to her benefit rate, the Claimant would have been entitled to partial benefits during the allocation of her separation payments. Therefore, she could not have shown that she was “not entitled to benefits because of her separation earnings.”

[72] In short, the Commission conducted a file review after the Claimant asked for reconsideration of the overpayment in June 2024. Its review discovered that its September 2023 calculations failed to account for the impact of the increased benefit rate on her entitlement to benefits during the allocation period. It had not accounted for all the effects of her vacation pay earnings and its adjustment of her benefit rate to \$631.00. It did not consider whether the increased benefit rate affected her entitlement

¹¹ I recognize that the benefit rate was later increased again from \$631.00 to \$632.00. However, it was the first increase from \$535.00 to \$631.00 that affected the Claimant’s entitlement in the allocation period. The subsequent increase to \$632.00 was inconsequential.

¹² See section 13 of the EI Act. Also see section 13.1 for the formula/calculation by which the initial week of her allocation period was deemed to be a “week in which benefits were otherwise payable.”: **If** Benefit rate — [Earnings - .25(Benefit rate)] is greater than or equal to zero, then the week is a week of unemployment for which benefits would be payable. The Claimant’s earnings were allocated at her normal weekly earnings of \$729.00. Using a rate of \$535.00, the formula result was less than zero. Using a rate of \$631.00, the formula result is greater than zero.

¹³ Section 19(2) actually deducts earnings from benefits at the following rate: 50% of 90% of normal weekly earnings plus 100% of 10% of normal weekly earnings = deduction. This is actually a larger deduction from benefits than is 50% of normal weekly earnings. But regardless, the Claimant would still be entitled to partial benefits after the deduction.

¹⁴ See section 10(10)(b) of the EI Act.

to receive benefits during the weeks of the allocation, nor had it revisited its decision to give her a 10-week benefit period extension.

[73] The Commission has since come to understand that it should have had the Claimant serve her waiting period immediately, and then paid her partial payments during the period in which her separation payments were allocated. If it had done this, the Claimant would probably not have received any benefit period extension.

[74] The Commission's October 17, 2024, decision to reduce her benefit period to zero was its way of remedying this early mistake.

What was the scope of the Claimant's reconsideration request?

[75] The Claimant asked for a reconsideration of a \$5,471.00 overpayment, which arose as a result of an increase to an existing benefit period extension.

[76] The Commission argues that the General Division did not need to consider whether it acted judicially, because it did not reconsider under the authority of section 52.

[77] Essentially, the Commission is arguing that the Claimant's request gave it broad latitude to explore how the benefit period extension was determined. It says that it was responding to the Claimant's request when it decided that the Claimant should not have received any benefit period extension.¹⁵

[78] Its October 17, 2024, reconsideration decision did not specify how much the Claimant would have to repay as a result of this change. But the decision would presumably give the Commission the authority to reevaluate other benefits it paid to her based on the change to her benefit period extension, and to recalculate her overpayment.

[79] It is usually a simple matter to define the scope of a claimant's reconsideration request. The claimant disagrees with the Commission's decision on an issue, and they

¹⁵ See section 112 of the EI Act; see also ADN5-16.

request the Commission to reconsider that issue. In response, the Commission reevaluates its decision on the issue of concern and it either maintains the decision or corrects it.

[80] But the Claimant requested a reconsideration of a Notice of Debt. A Notice of Debt is never a stand-alone decision. It is more akin to the *consequence* associated with some other decision. So, I agree with the Commission that it had to revisit the underlying decision in order to reconsider the debt amount.

[81] In this case, there is no obvious justification for the overpayment on the face of the reconsideration file. The file includes no record of what caused it to extend the Claimant's benefit period to 24 weeks.

[82] The Commission has now produced a spreadsheet, which suggests that it inputted the extension from 10 weeks to 24 weeks on March 28, 2024.¹⁶ But the Commission did not explain the overpayment to the Claimant at the time. It did not communicate any decision about how it arrived at the "internal adjustment," that was stated on the face of the Notice of Debt. This meant that the Claimant had no choice but to seek a reconsideration of the Notice of Debt if she believed or suspected that the overpayment was incorrect.

[83] In May 2023, the Commission allocated the Claimant's severance earnings over 10 weeks.¹⁷ As I have tried to explain, the Commission would not have granted the benefit extension unless it also determined that the Claimant would not be entitled to benefits during the allocation. It must have calculated that her benefit rate was relatively low when compared to earnings that the Commission allocated at her normal weekly earnings rate.¹⁸ The Commission would have extended the Claimant's benefit period for a number of weeks equal to the period of disentitlement.¹⁹

¹⁶ See RGD3-23.

¹⁷ See GD3-19.

¹⁸ See section 13,1 and section 19(2) of the EI Act.

¹⁹ See section 10(10)(b) of the EI Act. See also RGD3-23 (first and second columns).

[84] When the Commission mistakenly extended the benefit period to 24 weeks, this drove a decision to deny entitlement to additional weeks during the time of a presumed separation earnings allocation. So, the Claimant would have to repay benefits paid during that allocation period.

[85] If I correctly understand the Commission's explanation, it is saying that it somehow inputted an extension of a 24-week benefit period and that its system—working backwards—assumed that the Claimant would not have been entitled to benefits during a corresponding period at the beginning of the claim. So, the system retroactively calculated an overpayment that corresponded to the benefits that she would have paid over a longer allocation period (during which she would not be entitled to benefits). According to the Commission, the change to the benefit period extension was the underlying decision on which it based the Notice of Debt overpayment.

[86] In other words, the additional benefit extension from 10 weeks to 24 weeks was not a necessary consequence of earlier findings or any reasoned decision. It was based on a purely administrative error.

[87] This does not track the decision process outlined in the law. The law provides that a claimant's benefit period may be extended as a consequence of a decision that a claimant is not entitled to benefits for a corresponding period of weeks. This weekly disentitlement requires that a claimant be in receipt of separation earnings, and depends on comparing the claimant's benefit rate to their separation earnings in each week.

[88] Before the Claimant can extend the benefit period, it must first make decisions to, 1) allocate the earnings to weeks of benefits; 2) calculate the claimant's benefit rate; and; 3) determine the claimant's entitlement to benefits during the allocation. These decisions drive its decision on the benefit period extension. The benefit period extension does not drive these other decisions.

[89] I understand that various findings and decisions may be linked within the Commission's system. The Commission tells me that inputting a change to the value for

“benefit period extension” produced the associated change to the Claimant’s earlier entitlements. In other words, the Commission’s system is set up in such a way that the two values are dependent on each other. But this does not show that the Commission’s mistake or “decision,” to extend the benefit period, could have had the *legal* effect of disentitling the claimant to any benefits she had received during the allocation of separation payments.

[90] Nonetheless, I accept—on the particular facts of this case—that the March 30 overpayment may be traced back to the input or “decision” to extend the benefit period to 24 weeks. The overpayment cannot be legally or factually justified. So, it cannot be traced to anything else. It is the result of the error alone.

[91] Therefore, I accept that the Claimant’s request to reconsider the resulting overpayment authorized the Commission to review whether its additional 14-week extension was justified and whether it had calculated the associated overpayment correctly.

[92] But what the Claimant asked the Commission to reconsider and what it decided in its reconsideration decision were two different things.

[93] The Claimant asked for a reconsideration of the March 30 Notice of Debt. The Notice of Debt was intended to recover benefits that had already been paid. The Commission-mistakenly- decided that the Claimant **should not** have been entitled to benefits during additional weeks within the allocation of her separation payments. So, it wanted the Claimant to repay them.

[94] However, the Commission reconsidered by reducing the Claimant’s benefit period to zero. In doing so, the Commission was indirectly deciding that she **should** have been entitled to benefit payments during the entire allocation of separation earnings. But its October 17 decision would also mean that she would not be entitled to other benefits that it paid her later in the claim—even those paid to her after her reconsideration request.

[95] The Commission could not decide the Claimant was not entitled to the original 10-week extension without revisiting its earlier findings and decisions. When it granted the 10-week extension, its decision was based on her benefit rate at the time, which was based on the information that was then available on separation income.

[96] By September 2023, the Commission had learned of the Claimant's additional vacation pay earnings, and so it recalculated her benefit rate. It could have reconsidered her entitlement to benefits in the allocation period based on the increased benefit rate. This would have justified a reconsideration of the 10-week benefit period extension.

[97] However, the Commission had not done this by the time it mistakenly extended her benefit period to 24 weeks. It had responded to information about the Claimant's vacation pay by adjusting the benefit rate to \$531.00. It had also reallocated the increased earnings, extending the allocation period. However, it had not considered if, or how, this affected her entitlement to benefits during the allocation period.

[98] When the Commission extended the allocation period, this meant that the Claimant would no longer be entitled to some of the weekly benefits she had already received. On September 8, 2023, the Commission issued the Claimant a Notice of Debt for \$1,128.00 to recover benefits it had paid her in the weeks from July 23, 2023, to August 26, 2023. These weeks fell within the allocation period, after it was extended in September.

[99] The Claimant requested a reconsideration of this overpayment on September 28, 2023, and the Commission changed its decision. In a November 21, 2023, decision, the Commission recognized that it had acted injudicially when it reconsidered those benefits that it had paid her. The Commission did not then interpret the Claimant's request for reconsideration as an opportunity to revisit its other September 2023 calculations, or any prior findings or decisions.

[100] In summary, the Commission has had the information on which it could have reconsidered the original extension to the benefit period on its own initiative for some

time. However, the Claimant's request for reconsideration required only that the Commission investigate how its **increase** to the benefit period extension resulted in the overpayment.

[101] That part of the Commission's reconsideration decision that reduced the Claimant's benefit period extension to zero, was outside the scope of what it could decide in response to the Claimant's reconsideration request. It necessarily involved a reconsideration of the original decision that the Claimant was entitled to benefits during the original 10-week allocation.

[102] I find that this was a discretionary reconsideration under section 52.

– **Was the General Division obliged to consider whether the Commission acted judicially?**

[103] I have found that the overpayment represented by the March 30, 2024, Notice of Debt was actually a discretionary reconsideration. I have also found that the Commission's October 17, 2024, response to the Claimant's request for reconsideration went too far, so that it was itself a discretionary reconsideration of the Claimant's entitlement to benefits during the original 10-week allocation.

[104] Whenever the Commission reconsiders at its own initiative, it is making a discretionary decision. Both of these decisions were discretionary, so the Commission was required to act judicially.

[105] The General Division did not consider whether the Commission acted judicially in either case. This is an error of jurisdiction.

Error of fact

[106] The Claimant argues that the General Division did not duly consider the Commission's many mistakes or the mistakes of her employer. She characterizes this as an error of fact.

[107] An error of fact is where the General Division has based its decision on a finding of fact that overlooked or misunderstood important evidence, or on a finding that does not follow rationally from the evidence.

[108] The General Division found that the Claimant was not entitled to an extension of her benefit period. That decision was based on what the law says about when an extension may be granted. It was not based on whether the Commission or the employer had made mistakes.

[109] In any event, the General Division acknowledged that the Commission had made mistakes in adjudicating the claim, and it recognized that incorrect information from her employer had also been a factor. The fact that mistakes were made was likely of little relevance to the General Division's decision, but the General Division did not ignore or misunderstand them, all the same.

[110] The Claimant may believe that the General Division did not give sufficient weight to the evidence of mistakes. However, I have no authority to interfere with how the General Division has weighed or evaluated the evidence, even if I might have decided differently.²⁰

[111] The General Division did not make an error of fact.

Remedy

[112] 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.²¹

[113] The Claimant would like me to make the decision. The Commission took no position on what I should do if I found an error.

²⁰See, for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.

²¹ See section 59(1) of the DESDA.

[114] The question is whether the Commission acted judicially when it decided that the Claimant had been overpaid following its mistake, and when it decided to eliminate the first 10 weeks of the Claimant's benefit period extension.

[115] In most cases where the General Division has failed to consider whether the Commission acted judicially, there would be sufficient information on the file so that I could make the decision that the General Division should have made.

[116] In this case, the Commission's response to the Claimant's request to reconsider her overpayment is intertwined with its discretionary reconsideration of the first 10 weeks of her benefit period extension. I do not consider that either party has had a fair opportunity to address the manner in which the Commission reconsidered the original 10-week benefit period extension.

[117] So, I am returning the matter to the General Division for a new decision.

[118] The Claimant is entitled to a decision on whether the Commission acted judicially when it decided that she had been overpaid, but she is also entitled to a decision on whether the Commission acted judicially when it decided that she should not be entitled to any benefit period extension at all.

[119] It may be useful to the General Division to obtain an accounting from the Commission that independently tracks and calculates the benefit and overpayment consequences of restoring the benefit period extension from 24 weeks to the original 10 weeks, and the consequences of reducing the benefit period extension from 10 weeks to zero weeks.

Conclusion

[120] The appeal is allowed. The General Division made an error of jurisdiction by failing to consider whether the Commission acted judicially when it reconsidered the overpayment on March 30, 2023, and when it decided that the Claimant should receive zero benefit period extension.

[121] I am returning the matter to the General Division to reconsider.

Stephen Bergen
Member, Appeal Division