



Citation: *GZ v Canada Employment Insurance Commission*, 2024 SST 427

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant:

G. Z.

Respondent:

Canada Employment Insurance Commission

Representative:

Adam Forsyth

Decision under appeal:

General Division decision dated November 9, 2023
(GE-23-2102)

Tribunal member:

Elizabeth Usprich

Type of hearing:

In Writing

Decision date:

April 24, 2024

File number:

AD-24-17

Decision

[1] The appeal is allowed.

[2] I am allowing the appeal based on the Commission's concession that there has been an error. The General Division made an error of jurisdiction because it failed to make a decision about whether the Canada Employment Insurance Commission (Commission) acted judicially when it decided to reconsider the Employment Insurance (EI) benefits claim. The General Division only focussed on whether the Claimant's earnings had to be allocated.

[3] I have given the decision that the General Division should have given. The Commission didn't apply its own policy for deciding whether to reconsider claims. This means the Commission didn't judicially decide to review the claim. This means the allocation of earnings is rescinded. The debt should not have been established.

Overview

[4] G. Z. is the Claimant. His son was born in December 2022. The Claimant applied for parental benefits on January 14, 2023, but returned to work on January 23, 2023.¹

[5] He notified the Commission of his return to work.² Despite having told the Commission that he had returned to work he started receiving EI parental benefit payments in March 2023.³

[6] The Commission decided to reconsider the claim in April 2023. It decided the Claimant had earnings that should be allocated for weeks that he was paid EI benefits. So, the Claimant's earnings were deducted from his benefits which resulted in an overpayment of benefits. A notice of debt was then issued to the Claimant.

¹ See GD3-15 the application for benefits that has a time stamp of January 14, 2023 at 2:19 p.m.

² See GD3-18 the Commission's record that the Claimant called on February 3, 2023 to notify that he returned to work on January 23, 2023. See also the General Division decision at paragraphs 25 to 28.

³ See GD5-2.

[7] The Claimant says it isn't fair that the Commission reconsidered his claim. He told them he returned to work. So, through no fault of his own, the Claimant received money from the Commission. The Claimant appealed to the Social Security Tribunal (Tribunal) General Division.

[8] The Claimant told the General Division that what the government (the Commission) had done was not fair and was an abuse of power.⁴

[9] The General Division focussed only on whether the Claimant had earnings during the weeks he was receiving parental benefits. It said those earnings had to be deducted from the EI benefits he had already received. This resulted in an overpayment of benefits. The General Division didn't consider whether or not the Commission acted judicially with its reconsideration of the claim. The Claimant appealed this decision.

[10] The Commission now says it didn't follow its own policy about reconsidering a claim retroactively.⁵ The Commission says the Claimant made contact to provide all of the required information and didn't make any false or misleading statements. The Commission admits it made an error in the payment of benefits. The Commission says the General Division should have made a decision about whether the Commission judicially decided to reconsider this claim.

[11] I agree the General Division should have considered whether the Commission judicially decided to reconsider this claim and not doing so was an error of jurisdiction.

[12] I am allowing the appeal. The General Division made an error of jurisdiction. I am giving the decision that the General Division should have given. The Commission didn't act judicially when it decided whether to reconsider the Claimant's claim.

⁴ Listen to the General Division hearing recording at 01:02:58.

⁵ See AD5-2.

The parties agree on the outcome of the appeal

[13] The Commission conceded that it failed to use its discretionary power judicially.⁶ It conceded that it didn't apply its own reconsideration policy.

[14] The Claimant and the Commission agree the decision to allocate earnings should be rescinded. This means the resulting debt would no longer exist.⁷

I accept the proposed outcome and remedy

[15] The parties agreed that the file is complete.

[16] This means I can give the decision that the General Division should have given. That includes deciding whether the decision to reconsider the Claimant's claim was made judicially.⁸

[17] The General Division made an error of jurisdiction by not considering whether the Commission acted judicially in deciding whether to reconsider the Claimant's claim.

[18] The Claimant told the General Division, "the government didn't do the work properly and made a mistake and it isn't right. The government has a lot of money and I am just an ordinary individual. The government shouldn't abuse their power."⁹ This should have alerted the General Division that this Claimant, was saying there was something unfair about Commission's decision.¹⁰ Section 52 of the *Employment Insurance Act* (EI Act) allows the Commission to reconsider a claim for benefits within 36 months after the benefits have been paid.¹¹ This is a discretionary decision and must be made judicially.

⁶ See AD5-3 and AD8-1.

⁷ See AD5-3, AD8-2 and AD6-1.

⁸ Section 59(1) of the *Department of Employment and Social Development Act* allows me to fix the General Division's errors in this way.

⁹ Listen to the General Division hearing recording at 1:02:58.

¹⁰ The Claimant speaks English as a second language and was self-represented. The Claimant's arguments to the General Division should have made it clear that section 52 of the EI Act should have been considered.

¹¹ See section 52(1) of the *Employment Insurance Act* (EI Act).

[19] The Commission has a policy to make sure it applies its' power under 52 consistently and fairly.¹² The Commission has conceded that it didn't follow its own policy.¹³ I accept that the policy should apply here and that the Commission didn't apply their policy.

[20] The parties agree that if the Commission's policy were applied it would mean that the claim for benefits wouldn't have been reconsidered. I accept the parties' position.

[21] In this case, the Claimant applied for EI parental benefits on January 14, 2023.¹⁴ He was on vacation from his employer until January 1, 2023.¹⁵ Because the Claimant was being paid his vacation time, he wasn't entitled to start a claim for benefits earlier.

[22] The Claimant returned to work on January 23, 2023, because he couldn't afford to just be on EI benefits. On February 3, 2023, the Claimant notified the Commission that he started back at work on January 23, 2023.¹⁶

[23] The Commission started paying the Claimant benefits on March 8, 2023. Several payments were made.¹⁷

[24] The Commission notes that it didn't properly manage the information that the Claimant provided.¹⁸ It says it established a benefit period and paid multiple weeks of parental benefits despite the Claimant notifying that he returned to work.

[25] The Commission admitted that it didn't actively review the file until April 18, 2023.¹⁹ The Commission says it has a policy to ensure that section 52 of the EI Act is consistently and fairly applied. It says it didn't apply this policy in the present case.²⁰

¹² See AD5-2.

¹³ See AD5-3.

¹⁴ See GD3-15.

¹⁵ See GD3-26 Record of Employment from his employer that lists reason for separation as "P" for parental leave.

¹⁶ See GD3-18.

¹⁷ See GD5-2 that show the Claimant's banking records and that he received several deposits starting March 8, 2023.

¹⁸ See AD5-1.

¹⁹ See AD5-1.

²⁰ See AD5-2.

[26] The Commission concedes the Claimant properly advised it that he had gone back to work. Because the Claimant was exempt from filing claimant reports, the Claimant did the proper thing and called the Commission to let them know.²¹

[27] So, the Commission agrees it failed to apply its policy. This means it didn't exercise its discretion judicially when it decided to reconsider his claim. The Commission's decision to issue a notice of debt can't stand for this reason. The situation arose through no fault of the Claimant's actions.

[28] The Commission failed to act on the Claimant's information that he had returned to work. The Claimant properly notified the Commission more than once. The Claimant didn't create the error. The Commission didn't judicially reconsider the claim. This means the allocation of earnings is rescinded. The debt should not have been established.

Conclusion

[29] The appeal is allowed.

[30] The General Division made an error of jurisdiction by failing to analyze if the Commission judicially decided to review the claim.

[31] I have given the decision that the General Division should have given. The Commission didn't apply its own policy for deciding whether to reconsider claims. This means the Commission didn't judicially decide to review the claim.

[32] This means the allocation of earnings is rescinded. The debt should not have been established.

Elizabeth Usprich
Member, Appeal Division

²¹ The Claimant filled out an "Exemption Declaration – Parental" that meant he didn't not have to file biweekly claimant reports. He agreed to notify the Commission if he worked or received money or had another situation that might have affected his EI benefits. See GD3-9.