



Citation: *BZ v Canada Employment Insurance Commission*, 2024 SST 1127

## Social Security Tribunal of Canada Appeal Division

# Decision

<b>Appellant:</b>	B. Z.
<b>Representative:</b>	Thomas Oulton
<b>Respondent:</b>	Canada Employment Insurance Commission
<b>Representative:</b>	Daniel McRoberts

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<b>Decision under appeal:</b>	General Division decision dated February 23, 2024 (GE-23-3201)
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<b>Tribunal member:</b>	Melanie Petrunia
<b>Type of hearing:</b>	Videoconference
<b>Hearing date:</b>	September 13, 2024
<b>Hearing participants:</b>	Appellant Appellant's representative Respondent's representative
<b>Decision date:</b>	September 20, 2024
<b>File number:</b>	AD-24-214

## **Decision**

[1] The appeal is allowed. The General Division made an error of law and failed to provide a fair process. I am returning the matter to the General Division for reconsideration.

## **Overview**

[2] The Appellant (Claimant) received employment insurance (EI) regular benefits from January 31, 2021, to September 11, 2021. Later the Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant was not available for work and disentitled him from receiving benefits as of February 1, 2021. This created an overpayment.

[3] The Claimant appealed to the Tribunal's General Division. He argued that he was available for work, and that the Commission didn't act fairly when it retroactively disentitled him from receiving benefits.

[4] The Claimant's appeal was dismissed. The General Division found that the Claimant did not prove that he was available for work. It also found that he did not prove that the Commission acted in bad faith or improperly exercised its discretion when it reconsidered the Claimant's benefits.

[5] The Claimant says that the General Division made numerous errors. The Commission agrees that the General Division made an error of law and did not follow procedural fairness.

## **The parties agree on the outcome of the appeal**

[6] While the Claimant has alleged a number of errors by the General Division, the parties agree that there were two reviewable errors.

[7] First, the parties say that the General Division erred in law when determining whether the Commission properly exercised its discretion in deciding to retroactively disentitle the Claimant. Second, the General Division did not afford the Claimant

procedural fairness when it did not provide an opportunity for him to submit additional evidence that he referred to at the hearing.

[8] The parties also agree that the matter should be sent back to the General Division for a new hearing.

### **I accept the proposed outcome**

[9] I agree with the parties that the General Division made an error of law. In determining whether the Commission exercised its discretion judicially, the General Division was required to examine the factors that the Commission took into consideration.

[10] The General Division found that the Commission had reconsidered the Claimant's claim within 36 months and that the Claimant did not prove the Commission acted in bad faith.<sup>1</sup> The General Division does not appear to have considered any other factors.

[11] The General Division did not refer to any factors that the Commission took into consideration when it made its decision or whether these factors were assessed appropriately. It also misstated the law when it found that the Claimant did not prove that the Commission acted in bad faith.<sup>2</sup> The Commission had the burden of proving that it exercised its discretion judicially.

[12] At the hearing before the General Division, the Claimant referenced additional evidence that he had to support his testimony.<sup>3</sup> The General Division did not provide the Claimant with an opportunity to submit this evidence to the Tribunal. I agree with the parties that the General Division did not provide a fair process in this respect.

[13] The Commission states that it did not provide submissions to the General Division on the factors that it took into consideration when it retroactively disentitled the

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<sup>1</sup> General Division decision at para 54.

<sup>2</sup> General Division decision at para 55.

<sup>3</sup> Recording of hearing before General Division at approx. 16:00 to 18:00.

Claimant. The Claimant notes that he has additional evidence as referenced at the hearing that he would like to rely on.

[14] I find that the record is not complete and agree with the parties that the appropriate remedy is to return the matter to the General Division for a new hearing.

## **Conclusion**

[15] The appeal is allowed. The General Division erred in law and did not provide a fair process. I am returning the matter to the General Division for a new hearing.

Melanie Petrunia  
Member, Appeal Division