



Citation: *SF v Canada Employment Insurance Commission*, 2024 SST 958

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

<b>Appellant:</b>	S. F.
<b>Respondent:</b>	Canada Employment Insurance Commission
<b>Representative:</b>	Jonathan Dent

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<b>Decision under appeal:</b>	General Division decision dated May 15, 2024 (GE-24-849)
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<b>Tribunal member:</b>	Elizabeth Usprich
<b>Type of hearing:</b>	Teleconference
<b>Hearing date:</b>	August 12, 2024
<b>Hearing participants:</b>	Appellant Respondent's representative
<b>Decision date:</b>	August 13, 2024
<b>File number:</b>	AD-24-400

## Decision

[1] The appeal is allowed.

[2] The General Division made an error of law and error of jurisdiction. The matter must go back to the General Division for reconsideration.

## Overview

[3] S. F. is the Claimant. He and his spouse both claimed extended parental benefits after their baby was born.

[4] After the Canada Employment Insurance Commission (Commission) paid the Claimant benefits, it reconsidered the claim. The Commission decided the Claimant was overpaid eight weeks of extended parental. This is because the Claimant's spouse had already been paid for that time.

[5] The Claimant argued the Commission had the information and should have acted on it. He doesn't think it is fair that he should have to repay these benefits.

[6] The General Division made an error of law because it didn't apply legally binding case law. It also made an error of jurisdiction because it didn't do an analysis about whether the Commission exercised its discretion judicially when it reconsidered the Claimant's benefits.

[7] The General Division didn't ask either party for submissions on this issue. I find this means the case must be returned to the General Division, so the parties are able to make submissions on this issue.

## The parties agree on the outcome of the appeal

### I accept the proposed outcome

[8] The Commission and the Claimant agree that there is an error of law and jurisdiction in the General Division's decision. They agree the General Division failed to apply binding case law and didn't do an analysis about section 52 of the *Employment*

*Insurance Act*. This is the section that gives the Commission the power to reconsider a claim.

[9] I can intervene (step in) only if the General Division made an error. I can only consider certain errors.<sup>1</sup> An error of law and error of jurisdiction<sup>2</sup> are errors that I can consider.

[10] The Claimant said in his appeal to the General Division that he believed the error was as a result of negligence on the Commission's part. He said the Commission was aware of all relevant facts about his and his wife's parental leave times.<sup>3</sup>

[11] The Commission wrote in its representations to the General Division that it had the authority under section 52 to reconsider the claim.<sup>4</sup> This section does give the Commission the authority to review a claim, but the Commission has to exercise the discretion to review judicially. When the Commission has the discretion to do something, as they do here, it can only be changed by the Tribunal **if** the Commission didn't exercise its power judicially.<sup>5</sup>

[12] The Federal Court of Appeal has laid out a legal test that is binding on the Tribunal. That means the legal test must be applied. It says a discretionary power is not exercised judicially if it can be shown that the decision maker: acted in bad faith; acted for an improper purpose or motive; considered an irrelevant factor or ignored a relevant factor; or acted in a discriminatory manner.<sup>6</sup>

[13] The General Division didn't ask either party for evidence or submissions on this issue. The General Division also didn't do any kind of analysis about this issue. I find this means the General Division made an error of law because it failed to address an

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<sup>1</sup> See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>2</sup> An error of jurisdiction occurs when the General Division didn't decide something it should have, or decided something it shouldn't have.

<sup>3</sup> See GD2-3.

<sup>4</sup> See GD4-4.

<sup>5</sup> See *Attorney General (Canada) v Knowler*, A-445-05.

<sup>6</sup> See *Attorney General (Canada) v Purcell*, [1996] 1 FCR 644.

established legal test that was at issue in this appeal. This same issue is also an error of jurisdiction because the General Division failed to address an issue it should have.

## **Remedy**

[14] Since I have found errors, there are two main ways I can remedy (fix) them. I can make the decision the General Division should have made. I can also send the case back to the General Division if I don't feel the hearing was fair or there isn't enough information to make a decision.<sup>7</sup>

[15] The Commission believes the outcome will be the same once the Commission's discretion is examined.<sup>8</sup> It's possible the outcome won't change. But the way I remedy a case isn't based on what the ultimate outcome will be. Here, the parties agreed that they didn't give any evidence about this issue.

[16] Because neither party provided evidence about this issue, I find the only remedy is to send the case back to the General Division.

## **Conclusion**

[17] The appeal is allowed.

[18] The General Division made errors of law and jurisdiction by failing to apply established case law and analyze if the Commission judicially decided to review the claim.

[19] The matter must go back to the General Division for reconsideration.

Elizabeth Usprich  
Member, Appeal Division

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<sup>7</sup> Section 59(1) of the DESD Act allows me to fix the General Division's errors in this way.

<sup>8</sup> See AD4-5.