Citation: *EC v Canada Employment Insurance Commission*, 2024 SST 1531

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	E. C.
Representative:	Josianne Drouin
Respondent:	Canada Employment Insurance Commission
Representative:	Marcus Dirnberger

Decision under appeal:	General Division decision dated July 5, 2024 (GE-24-1510)

Tribunal member:	Glenn Betteridge
Type of hearing:	Videoconference
Hearing date:	December 11, 2024
Hearing participants:	Appellant's representative Respondent's representative
Decision date:	December 12, 2024
File number:	AD-24-511

Decision

[1] I am allowing E. C.'s appeal.

[2] The parties agree the General Division made an important factual error. They say I should correct that error by making the decision. And they agree on the outcome.

[3] I accept the parties' agreement. The $2,500 payment E. C. received is earnings allocated to a period before her Employment Insurance (EI) claim. This means the payment doesn't affect her EI benefits.

Overview

[4] E. C. is the Claimant. She established a claim for EI maternity and parental benefits.

[5] The Claimant is a member of a federal public sector union, known as CAPE. While she was on leave, her union signed a new collective agreement. Under the terms, her employer paid her a one-time payment of $2,500. She reported this to the Canada Employment Insurance Commission (Commission).

[6] The Commission decided the payment was a signing bonus (also called an event bonus). It allocated it and deducted it from her EI benefits. This resulted in an overpayment for the Claimant. On reconsideration, she argued the Commission should not allocate and deduct the payment from her benefits. The Commission upheld its decision.

[7] The Claimant appealed to this Tribunal's General Division. It dismissed her appeal. It allocated the payment to a different week in her EI claim, using a different section of the law than the Commission used. So, she still had the overpayment.

[8] I gave the Claimant permission to appeal the General Division decision. At the Appeal Division hearing, the Commission conceded the appeal.

The parties agree on the outcome of the appeal

[9] At the Appeal Division hearing, the Commission conceded the appeal. I confirmed with the Claimant's representative and the Commission's representative they agreed on the following terms:

- The General Division made the important factual error I identified as an "arguable case" in the Leave to Appeal decision.
- I should make the decision the General Division should have made.
- The Commission should allocate the $2,500 payment to a period before the Claimant received EI benefits, under section 36(4) of the *Employment Insurance Regulations* (EI Regulations).

I accept the parties' agreement about the General Division's error and the outcome in the Claimant's appeal

[10] I accept the parties' agreement about the error.

[11] The General Division considered the *AC* decision, decided by another General Division Member using section 36(4) of the EI Regulations.[1] A.C. was part of the same union as the Claimant. A.C. also received the $2,500 payment under the new collective agreement, when she was on parental leave getting EI benefits.

[12] But the General Division mistakenly found the *AC* decision predated the signing of the Claimant's collective agreement.[2] So, it concluded the *AC* decision didn't help the Claimant. Then it decided her appeal using a different allocation section of the EI Regulations.[3]

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[1] See *AC v Canada Employment Insurance Commission*, 2024 SST 1262.
[2] See paragraphs 15 and 23 of the General Division decision.
[3] See section 36(5) of the *Employment Insurance Regulations*.

[13] This shows me the General Division made an important factual error.[4] It based its decision on a misunderstanding of the evidence. This means its decision isn't supported by the evidence.

[14] I will fix that error by making the decision the General Division should have made. Each party had a full and fair opportunity to present its case at the General Division.

[15] The Appeal Division's recent decision in *AC* supports the parties' agreement on the outcome.[5] It allocated the $2,500 payment under the CAPE collective agreement using section 36(4) of the EI Regulation—to a period before A.C. was getting EI benefits.

[16] I am persuaded by that decision and will follow it. The Appeal Division reviewed and weighed the relevant evidence. It made the findings of fact it had to make. Then it correctly applied the law, including court decisions, it had to apply.

[17] So, I accept the parties' agreement on the outcome.

Conclusion

[18] I am allowing the Claimant's appeal, based on the parties' agreement.

[19] I expect the Commission will now reverse the overpayment and debt. If the Claimant hasn't heard from the Commission or a Service Canada agent in a few weeks, she should contact Service Canada to follow up.

Glenn Betteridge
Member, Appeal Division

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[4] Section 58(1)(c) of the *Department of Employment and Social Development Act* says it's a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this error in plain language, based on the words in the Act and the cases that have interpreted the Act.
[5] See *AC v Canada Employment Insurance Commission*, 2024 SST 1261.