



Citation: *BA v Canada Employment Insurance Commission*, 2025 SST 168

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:

B. A.

Respondent:

Canada Employment Insurance Commission

Representative:

Linda Donovan

Decision under appeal:

General Division decision dated September 15, 2024
(GE-24-2746)

Tribunal member:

Stephen Bergen

Decision date:

January 14, 2025

File number:

AD-24-713

Decision

[1] The appeal is allowed. The General Division made an error of jurisdiction by not considering whether the Commission acted judicially. I am returning the matter to the General Division for a new hearing before a different member.

Background

[2] The Claimant was dismissed from his job on January 24, 2021. The Commission was aware that the Claimant was dismissed as early as January 26, 2021, but did not investigate the basis for the dismissal until August 2021. In the meantime, it continued to pay the Claimant benefits.

[3] It did not reconsider the benefits it paid until it informed the Claimant of its decision on September 22, 2021.

The parties agree on the outcome of the appeal

[4] The parties have asked for a decision based on an oral agreement reached during a settlement conference on January 14, 2025.

[5] The parties agreed that the General Division made an error of jurisdiction by not considering whether the Commission acted judicially in reconsidering the benefits paid between January and August 2021.

[6] The parties further agreed that the matter should be returned to the General Division to be reconsidered at an oral hearing before a different member. They agreed that the Claimant will have the opportunity to make any arguments to the General Division, or provide it with any evidence, relevant to

- whether the Commission acted judicially in reconsidering the payment of benefits, and
- any of the underlying substantive issues concerning the finding of misconduct.

I accept the Parties' agreement

[7] The General Division agreed with the Commission that the Claimant was dismissed from his job for misconduct. This meant that the Claimant was disqualified from receiving benefits. He would have to repay all the benefits he received after his dismissal.

[8] However, the General Division's decision does not show that it considered whether the Commission acted judicially in reconsidering the benefits it had already paid.

[9] The Commission's decision to reconsider the payment of benefits was a discretionary decision. Discretionary decisions must be made "judicially," which is to say they must

- be in good faith, and without an improper purpose,
- not discriminate, and
- consider all the relevant factors and not consider irrelevant factors.

[10] The General Division made an error of jurisdiction by failing to consider whether the Commission acted judicially when it reconsidered.

[11] There is nothing on the file which explains why the Commission delayed its decision or how it reached the decision to reconsider the Claimant's benefits. I cannot determine if the Commission acted judicially.

Conclusion

[12] The appeal is allowed. The General Division made an error of jurisdiction by not considering whether the Commission reconsidered its decision in a judicial manner.

[13] I am returning the matter to the General Division for a new hearing before a different member. The General Division shall reconsider whether the Claimant was dismissed from his employment for misconduct, in addition to considering whether the Commission acted judicially in reconsidering the payment of benefits.

Stephen Bergen
Member, Appeal, Division