



Citation: *Canada Employment Insurance Commission v NB*, 2025 SST 25

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Nikkia Janssen

**Respondent:** N. B.

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**Decision under appeal:** General Division decision dated September 5, 2024  
(GE-24-2681)

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**Tribunal member:** Elizabeth Usprich

**Type of hearing:** Videoconference

**Hearing date:** December 2, 2024

**Hearing participants:** Appellant's representative  
Respondent

**Decision date:** January 14, 2025

**File number:** AD-24-632

## Decision

[1] The appeal is allowed.

[2] The General Division didn't provide a fair process. The case must go back to the General Division for a new hearing.

## Overview

[3] N. B. is the Claimant. She applied for Employment Insurance (EI) maternity and parental benefits. She shared the parental benefits with her husband.

[4] The Canada Employment Insurance Commission (Commission) told the Claimant she received four weeks of EI parental benefits that she shouldn't have. So, the Claimant had an overpayment she had to pay back.

[5] The Claimant asked the Commission to reconsider its decision. She said she had been diligent about communicating with the Commission and asking about her return-to-work date. The Commission refused to change its position.

[6] The Claimant appealed to the Social Security Tribunal (Tribunal) General Division. The General Division decided the Commission had made a discretionary decision when it reconsidered the claim. The General Division decided the Commission didn't exercise its discretion judiciously. The General Division said the errors in the case were because of the Commission and the Claimant shouldn't have to pay for those.<sup>1</sup>

[7] The General Division agreed the Claimant wasn't entitled to 24 weeks of EI parental benefits. But it found the Commission shouldn't have reconsidered the claim. So, it set aside the overpayment.

[8] The Commission has now appealed the General Division's decision. The Commission says the General Division made many errors. It says the General Division

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<sup>1</sup> See the General Division decision at paragraph 77.

didn't provide a fair process, erred in law and made findings of fact that were perverse or capricious.

[9] I am allowing the Commission's appeal. The General Division didn't provide both parties with a fair process. I am returning the case to the General Division for a new hearing.

## Issues

[10] The issues in this appeal are:

- a) Did the General Division fail to provide a fair process when it didn't alert the parties to the material issue of whether the Commission judicially reconsidered of the claim for EI benefits?
- b) If so, how should the error be fixed?

## Analysis

[11] I can intervene (step in) only if the General Division made a relevant error. There are only certain errors I can consider.<sup>2</sup> The Commission argues the General Division acted unfairly, made an error of law and made important errors of fact.

### – Background information

[12] The Claimant established a claim for benefits on April 30, 2023. She asked for 20 weeks of standard parental benefits.<sup>3</sup> Parents can only share a maximum of 40 weeks standard parental benefits.

[13] The Claimant's husband told the General Division he couldn't remember how many weeks of EI benefits he requested. He thought he didn't have to go back to work until the end of October 2023. But that would have been more than 20 weeks.

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<sup>2</sup> Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the grounds of appeal which are also known as errors.

<sup>3</sup> The Claimant and her husband had a maximum of 40 weeks of Employment Insurance (EI) parental benefits that they could share. Additionally, the Claimant had 15 weeks of EI maternity benefits. The total maximum weeks for the Claimant are 35 weeks.

[14] The Claimant's husband decided to go back to work at the end of September 2023.<sup>4</sup> He believed he had four additional weeks of benefits available. The Claimant and her husband called the Commission and asked to have four weeks transferred from his account to the Claimant's.

[15] But the mathematics wasn't right. If the Claimant's husband took 20 weeks of parental benefits, then the maximum number of weeks potentially available to the Claimant was only 20 weeks.

[16] The Claimant testified she contacted the Commission more than once. She was trying to figure out when she had to return to work. The calls weren't recorded so it's unknown exactly what questions she asked and the answers she received. Ultimately, the Claimant mistakenly received an extra four weeks of EI benefits.

[17] The Commission realized the error and notified the Claimant she received an extra four weeks of EI benefits.<sup>5</sup> This created an overpayment the Claimant had to pay back.

[18] The Claimant felt that she did her due diligence and shouldn't be responsible for the Commission's errors. The General Division said the Commission didn't judicially reconsider the benefits claim.

### **The General Division didn't provide a fair process**

[19] At the start of the hearing, the General Division framed the issue differently than the Claimant and the Commission. It told the Claimant the issue it would decide was about whether the Commission used its discretion judicially when it reconsidered her claim.<sup>6</sup> This wasn't raised before the hearing. This made the process unfair.

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<sup>4</sup> See GD2-14 and GD2-15, the Claimant's husband's screenshots showing he received payment for 20 weeks of parental benefits.

<sup>5</sup> See GD3-19, the Commission's letter to the Claimant on March 27, 2024.

<sup>6</sup> Listen to the General Division hearing recording at 00:07:43 to 00:10:15.

[20] The General Division can decide what issues need addressing.<sup>7</sup> But the General Division must also make sure that it hears appeals in a way that allows all parties to participate fully in the appeal process.<sup>8</sup> A fair process protects all parties.

[21] The Commission argues it didn't have a chance to make submissions on the issue of whether it used its discretion judicially to reconsider the claim. It says that despite the General Division stating the Claimant had raised this issue, the hearing recording suggests differently.<sup>9</sup>

[22] At the beginning of the hearing, the General Division said the Commission framed the issue as about the maximum number of weeks for parental benefits. The General Division then said it believed there was a more subtle issue about whether the Commission acted judicially when it reconsidered the claim. The General Division told the Claimant it's a technical and legal concept. It said it had no expectation that the Claimant would make arguments about this. Instead, the General Division would ask the Claimant questions.

[23] These statements favour that the General Division identified this issue before the hearing. It provided the Claimant with an opportunity to answer questions and make submissions about the issue. The Commission didn't have the same opportunity.

– **The General Division gave only one party an opportunity to make submissions**

[24] The General Division reasoned it didn't have to provide the Commission with an opportunity to make submissions.<sup>10</sup> It feels the rules of natural justice and procedural fairness didn't require any such opportunity. It said when the Commission reconsiders a decision, it's intrinsic whether it did so judicially.

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<sup>7</sup> See the *Social Security Tribunal Rules of Procedure* at 17(2).

<sup>8</sup> See the *Social Security Tribunal Rules of Procedure* at 6(c) and 17(1).

<sup>9</sup> See the General Division decision at paragraphs 34 and 35. Listen to the General Division hearing recording at 00:08:58.

<sup>10</sup> See the General Division decision at paragraphs 30 to 35.

[25] I disagree. The General Division's decision was about whether the Commission properly used its discretion in the reconsideration process.<sup>11</sup> The Claimant didn't directly raise this issue in her Notice of Appeal. The Commission responded to the direct issues raised by the Claimant.

[26] The Commission hasn't disputed that it needs to reconsider claims judicially. The issue is the General Division raised an issue then made findings based on its presumptions without seeking information from the Commission. It's established law that discretionary decisions of the Commission should be left alone unless it can be shown the Commission acted non-judicially.<sup>12</sup>

– **Fairness is owed to both parties**

[27] The General Division reviews an appeal before holding a hearing. At that time, it would make sense for the General Division to alert parties to issues it sees. This would ensure both parties would have an opportunity to make informed choices about attending the hearing or providing additional written submissions.

[28] It wasn't clear from the Claimant's Notice of Appeal that fairness was her issue.<sup>13</sup> As the General Division notes, the Claimant said it wasn't her fault there was an overpayment because of the Commission's error.<sup>14</sup> The General Division extrapolated that, "without saying so in so many words, [the Claimant] was claiming that the Commission didn't act judicially when it reconsidered her claim."<sup>15</sup>

[29] When the General Division made this extrapolation, it should have put the parties on notice. The Supreme Court of Canada says the duty of fairness is variable and must

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<sup>11</sup> Section 52 of the *Employment Insurance Act* (EI Act) is its own provision. The Federal Court of Appeal has also laid out a specific test when deciding if the Commission exercised its discretion appropriately. See *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA). This means there was a distinct test and section of the EI Act that needed to be applied.

<sup>12</sup> See, for example, *Canada (Attorney General) v Tong*, 2003 FCA 281 at paragraph 4 and *Canada (Attorney General) v Uppal*, 2008 FCA 388 at paragraph 13.

<sup>13</sup> See GD3-23 the Claimant's Reconsideration Request. See also GD2-7 the Claimant's Notice of Appeal to the General Division.

<sup>14</sup> See the General Division decision at paragraph 22.

<sup>15</sup> See the General Division decision at paragraph 22.

be looked at on a case-by-case basis.<sup>16</sup> But the overarching requirement is fairness. It would have been simple, quick, and fair for the General Division to put both parties on notice of what ended up being a material issue.

[30] The Commission didn't have an opportunity to address the issue or provide evidence or information. The decision turned on this issue. The Commission was denied procedural fairness because it didn't know the case it had to meet.

[31] Because I have found an error, I am not going to consider the other errors the Commission alleged.

## **Remedy**

[32] Since I have found an error, there are two main ways I can remedy (fix) it. 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.<sup>17</sup>

[33] Here, the General Division knew there was a key issue that neither party had raised. The Commission didn't have an opportunity to address the issue or provide evidence or information. The decision turned on this issue. I find the only way to fix this error is to send the case back to the General Division for a new hearing.

## **Conclusion**

[34] The appeal is allowed.

[35] The General Division didn't provide a fair process. The case must go back to the General Division for a new hearing.

Elizabeth Usprich  
Member, Appeal Division

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<sup>16</sup> See *Canada (Attorney General) v Mavi*, 2011 SCC 30 at paragraph 42. See also *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at paragraph 21.

<sup>17</sup> Section 59(1) of the DESD Act allows me to fix the General Division's errors in this way.