[TRANSLATION]

Citation: *Canada Employment Insurance Commission v AC*, 2024 SST 758

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Joshua Toews
Respondent:	A. C.

Decision under appeal:	General Division decision dated December 15, 2023 (GE-23-2033)

Tribunal member:	Pierre Lafontaine
Type of hearing:	Teleconference
Hearing date:	May 28, 2024
Hearing participant:	Appellant's representative
Decision date:	July 2, 2024
File number:	AD-24-53

Decision

[1] The appeal is allowed. The overpayment of the Respondent (Claimant) is $7,500. She has already paid back $5,000. Her remaining debt is $2,500.

Overview

[2] The Claimant claimed the Employment Insurance Emergency Response Benefit (EI ERB). The Appellant (Commission) paid her 24 weeks of the EI ERB. In total, the Claimant received $12,000 in the EI ERB. The Commission says that the Claimant was overpaid $7,500. She received $12,000, but she should have received only $4,500. The Commission argues that the Claimant has already paid back $5,000, so the overpayment amount is $2,500.

[3] The General Division found that the Claimant received 24 weeks of the EI ERB but was eligible for 11 weeks. It found that the Claimant had to pay back the overpayment of $1,500 received, and not $2,500.

[4] The Commission got permission to appeal the General Division's decision. It says that the General Division made an error of law.

[5] I have to decide whether the General Division made an error of law in its interpretation of section 153.9(4) of the *Employment Insurance Act* (EI Act).

[6] I am allowing the Commission's appeal.

Issue

[7] Did the General Division make an error of law in its interpretation of section 153.9(4) of the EI Act?

Analysis

Appeal Division's mandate

[8] The Federal Court of Appeal has determined that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.[1]

[9] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and doesn't exercise a superintending power similar to that exercised by a higher court.

[10] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal has to dismiss the appeal.

Did the General Division make an error of law in its interpretation of section 153.9(4) of the EI Act?

[11] Section 153.9(4) of the EI Act reads as follows:

> **153.9(4)** If a claimant receives income, whether from employment or self-employment, the total of which does not exceed $1,000 over a period of four weeks that succeed each other in chronological order but not necessarily consecutively and in respect of which the employment insurance emergency response benefit is paid, the claimant is deemed to meet the requirements of subparagraphs (1)(a)(iv) and (v), of paragraph (1)(b) or of subparagraph (1)(c)(iv), as the case may be.

[12] Under section 153.9(4) of the EI Act, a person is eligible for four weeks of benefits if they earn less than $1,000 over a four-week period. The Tribunal interprets how the four-week period is established in a contradictory manner.

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[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[13] The Commission says that the General Division made an error of law by not following the Appeal Division's reasoning in *Canada Employment Insurance Commission v HM*, 2023 SST 831.

[14] The General Division found that the Claimant's claim was established on April 12, 2020. It considered that week to be the first week. The General Division found that the law allowed it to choose any four-week period—but with some restrictions. The first is that the four weeks have to be consecutive. Another restriction is that the person has to have been paid benefits for that week.

[15] The General Division looked at the period from April 12 to May 9, 2020. It found that this four-week period is consistent with the definition. It then looked at the period from April 19, 2020, to May 16, 2020, and so on.

[16] The General Division says that this is the only way to analyze eligibility. It is of the view that if we don't look at it that way, there is a risk that some weeks won't be included in the analysis under section 153.9(4). This would be the case when the total number of weeks paid isn't a factor of four.

[17] The Appeal Division in *HM* analyzed the text, context, and purpose of section 153.9(4) of the EI Act. It found that three counting methods are consistent with the text of the provision, even though they each suggest a different starting point. But, after analysis, it chose the third counting method.

[18] The Appeal Division found that a claimant is retrospectively eligible for the EI ERB under section 153.9(4) (as an alternative to section 153.9(1)) if they earn no more than $1,000 over the four-week period leading up to the two-week claim period for which eligibility is being determined, skipping any weeks for which the EI ERB wasn't paid.

[19] In my view, the Appeal Division in *HM* was correct to dismiss the use of separate four-week blocks from the start of the benefit period.

[20] The law says that the EI ERB had to be claimed in two-week periods, and the Commission had to decide whether the benefit was payable for the same two-week periods.

[21] Also, section 153.9(4) of the EI Act doesn't say that a claimant earning no more than $1,000 over a four-week period is eligible for the EI ERB. Instead, section 153.9(4) says that a claimant has met the section 153.9(1) requirement of having no income for at least seven consecutive days in a two-week (and not a four-week) claim period.

[22] I agree with *HM* that the separate four-week periods from the start of the benefit period have nothing to do with the weeks for which the exception in section 153.9(4) is claimed. It is much less arbitrary, when looking at retrospective eligibility, to relate the four-week period to the weeks for which the exception is being claimed.

[23] Also, the use of separate four-week blocks from the start of the benefit period would leave many claimants without the opportunity to benefit from the exception near the end of their benefit period. The claimants would only have the first option to be eligible under section 153.9(1).

[24] The risk that some weeks may not be counted by the retroactive counting method is without merit. It is possible to follow the interpretation of *HM* while counting each week needed in the four-week analysis. A four-week period under 153.9(4) includes the two-week period for which eligibility is being verified.

[25] For these reasons, I am of the view that the General Division made an error of law in its interpretation of section 153.9(4) of the EI Act.

[26] This means I am justified in intervening.

Remedy

[27] Considering that the parties had the opportunity to present their case before the General Division, I will give the decision that the General Division should have given.

[28] When following *HM,* we find that the Claimant's overpayment is $7,500. She received 24 weeks of the EI ERB for a total of $12,000. But she was only eligible for nine weeks of the EI ERB—or a total of $4,500. The Claimant has already paid back $5,000. There is $2,500 left to pay.

Conclusion

[29] The Commission's appeal is allowed. The Claimant's overpayment is $7,500. She has already paid back $5,000. Her remaining debt is $2,500.

Pierre Lafontaine
Member, Appeal Division