

Federal Court



Cour fédérale

**Date: 20230925**

**Docket: T-198-23**

**Citation: 2023 FC 1287**

**Ottawa, Ontario, September 25, 2023**

**PRESENT: Mr. Justice O'Reilly**

**BETWEEN:**

**Wei chen**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr Wei Chen occupied an apartment with Ms Xin Shao for six months in 2020. They had a meal-sharing arrangement: Ms Shao purchased groceries and Mr Chen cooked. Ms Shao paid Mr Chen \$400 a month for his services. When the arrangement ended, Mr Chen applied for employment insurance benefits claiming that he had been employed by Ms Shao for 140 hours during those six months. He provided the Canada Employment Insurance Commission with receipts and a Record of Employment.

[2] The Commission denied Mr Chen benefits, finding that the Record of Employment was not valid and that Mr Chen had not been an employee.

[3] Mr Chen has pursued a number of proceedings before the Social Security Tribunal seeking to overturn the Commission's decision. On his appeal to the General Division of the Tribunal, the Tribunal member asked the Commission to seek a ruling from the Canada Revenue Agency on the question whether Mr Chen was an employee and therefore entitled to benefits. The CRA found that Mr Chen was neither an employee nor self-employed. On the basis of that ruling, the General Division dismissed Mr Chen's appeal.

[4] Mr Chen then appealed to the Appeal Division of the Tribunal, which concluded that Mr Chen had not received a fair hearing before the General Division. It remitted the matter back to the General Division for reconsideration.

[5] On reconsideration, the General Division found that it was bound by the CRA's conclusion that Mr Chen was not eligible for benefits. It concluded that it had no jurisdiction to depart from the CRA's ruling and that Mr Chen's only recourse was to appeal the CRA's decision.

[6] Mr Chen tried to appeal again. The Appeal Division of the Tribunal denied Mr Chen's request for leave to appeal because his appeal had no chance of success: Both the General Division and the Appeal Division were bound by the CRA's ruling, so the only viable route for Mr Chen was to appeal the CRA's decision.

[7] Mr Chen now seeks judicial review of the latest decision of the Appeal Division of the Tribunal. At the oral hearing of his application, Mr Chen did a commendable job of thoroughly setting out his arguments in his second language. He had hoped to have an interpreter assist him at the hearing, but the interpreter was unavailable. When I had difficulty understanding Mr Chen, I interrupted him to seek clarification. He raised a number of arguments before me relating to the jurisdiction of the Tribunal, the fairness of the various proceedings, the treatment of his evidence, and the Tribunal's responses to his arguments. I find that these issues can all be addressed by answering a single question: Was the Appeal Division's decision unreasonable?

[8] For the reasons that follow, I find that the Appeal Division's decision was not unreasonable. It exercised its jurisdiction according to its statutory mandate, held a fair hearing, took account of the evidence before it, and responded adequately to Mr Chen's arguments. I must, therefore, dismiss this application for judicial review.

## II. The Appeal Division's Decision

[9] The Appeal Division addressed the several issues raised by Mr Chen (similar to the issues he raised before me). It found that the General Division was entitled to ask the Commission to seek a ruling from the CRA and that the General Division was bound by that ruling. The General Division did not abdicate its jurisdiction – it properly applied the CRA's decision.

[10] Mr Chen urged the Appeal Division to recognize that its previous ruling – sending the matter back to the General Division – implicitly recognized that the General Division had jurisdiction, independent of that of the CRA, to decide whether he was entitled to benefits.

Otherwise, there was no point sending the case back to the General Division. The Appeal Division explained that it had remitted the matter because the General Division had given Mr Chen until February 28, 2022 to make written submissions. However, the General Division issued its decision on February 8, 2022, before Mr Chen had a chance to submit his arguments. Based on that unfair set of circumstances, the Appeal Division sent the matter back so that Mr Chen would have a proper chance to put forward his submissions. After a hearing, the General Division concluded that only the CRA could make a decision about insurable earnings and that the CRA's ruling would be binding on the Commission and the General Division. Accordingly, Mr Chen's only recourse was to appeal the CRA's decision.

[11] Mr Chen also argued before the Appeal Division that the General Division had prejudged his case by stating at the outset of the hearing that it did not have jurisdiction to alter the CRA's decision. The General Division did not give him a chance to prove that he had been employed in 2020 and was entitled to benefits. The Appeal Division noted, once again, that the General Division was not in a position to rule on the question whether Mr Chen was eligible for benefits given that the CRA had already determined that he was not. The General Division did not prejudge Mr Chen's case; it simply explained that it could not provide the relief Mr Chen was seeking. Similarly, the General Division did not ignore Mr Chen's evidence.

[12] In addition, Mr Chen argued that the hearing before the General Division was unfair because his interpreter was incompetent and he was not allowed to call a witness (the alleged employer). The Appeal Division found that Mr Chen was, in effect, attempting to mount a collateral attack on the CRA's ruling before the General Division. Better interpretation and

additional evidence could not alter the fact that the General Division's hands were tied by the CRA's decision.

[13] Finally, Mr Chen maintained that the General Division had incorrectly concluded that it had jurisdiction to request that the Commission seek a ruling from the CRA. He argued that the Commission could do so only on its own initiative, not in response to a request from the General Division. The Appeal Division noted that there are no legal restrictions on when or how a CRA ruling is sought; the Commission can ask for a ruling "at any time" (citing ss 90(1) and (2) and s 90.1 of the *Employment Insurance Act*, SC 1996, c 23. See Annex for provisions cited).

[14] The Appeal Division concluded that Mr Chen's appeal had no chance of success, so it refused his application for leave.

### III. Was the Appeal Division's Decision Unreasonable?

[15] Mr Chen makes a number of arguments in support of his application for judicial review. Some of them relate to the conduct of the Commission in denying his claim for benefits. For example, he maintains that the Commission never considered his documentary evidence and did not conduct a proper investigation; in fact, it made a number of errors.

[16] Other arguments relate to the Tribunal's decisions. Mr Chen contends that the General Division erred by breaching its undertaking to consider his submissions. Further, the hearing before the General Division was, he says, unsatisfactory – it was adjourned a number of times, and he was not allowed to present his witness. When the Appeal Division sent the matter back to

the General Division, it did not state that the CRA ruling was binding; nor did it consider the issues or the evidence. Yet, it later concluded that the CRA's decision was unalterable.

[17] In addition, Mr Chen submits that neither Division of the Tribunal acted impartially or independently; rather, after ordering the Commission to seek a ruling from the CRA, the Tribunal simply relied on that ruling instead of making its own decision.

[18] Notwithstanding Mr Chen's multiple arguments, the only decision in issue here is the Appeal Division's second ruling set out above and the only issue is whether that decision was unreasonable. The decisions taken by the Commission, the General Division, and the first Appeal Division member have all been overtaken by the Appeal Division's second decision.

[19] I find that the Appeal Division's second decision was not unreasonable. It considered the factual circumstances of Mr Chen's application for benefits, the issues of fairness that Mr Chen had raised, the statutory framework within which the Tribunal exercised its jurisdiction, and the binding nature of CRA rulings. The fact that it relied on the CRA's decision, as it was required to do, does not indicate a lack of impartiality or independence. Overall, the Appeal Division's reasons were transparent, justified, and intelligible, and responsive to Mr Chen's submissions. Its conclusion was not unreasonable.

#### IV. Conclusion and Disposition

[20] I find that the Appeal Division's decision denying Mr Chen leave to appeal was not unreasonable. Its reasons were transparent, justified, and intelligible, and responsive to Mr Chen's submissions. Therefore, I must dismiss Mr Chen's application for judicial review.

**JUDGMENT IN T-198-23**

**THIS COURT'S JUDGMENT** is that the application for judicial review is dismissed.

"James W. O'Reilly"

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Judge



## Annex

**Employment Insurance Act, SC 1996, c 23****Loi sur l'assurance-emploi, LC 1996, c 23**

## Request for ruling

## Demande de décision

90. (1) An employer, an employee, a person claiming to be an employer or an employee or the Commission may request an officer of the Canada Revenue Agency authorized by the Minister to make a ruling on any of the following questions:

90. (1) La Commission, de même que tout employé, employeur ou personne prétendant être l'un ou l'autre, peut demander à un fonctionnaire de l'Agence du revenu du Canada autorisé par le ministre de rendre une décision sur les questions suivantes:

(a) whether an employment is insurable;

(a) le fait qu'un emploi est assurable;

(b) how long an insurable employment lasts, including the dates on which it begins and ends;

(b) la détermination de la durée d'un emploi assurable, y compris ses dates de début et de fin;

(c) what is the amount of any insurable earnings;

(c) la détermination de la rémunération assurable;

(d) how many hours an insured person has had in insurable employment;

(d) la détermination du nombre d'heures exercées dans le cadre d'un emploi assurable;

(e) whether a premium is payable;

(e) l'existence de l'obligation de verser une cotisation;

(f) what is the amount of a premium payable;

(f) la détermination du montant des cotisations à verser;

(g) who is the employer of an insured person;

(g) l'identité de l'employeur d'un assuré;

(h) whether employers are associated employers; and

(h) le fait qu'un employeur est un employeur associé;

(i) what amount shall be refunded under subsections 96(4) to (10).

(i) le montant du remboursement prévu à l'un ou l'autre des paragraphes 96(4) à (10).

#### Time limit

#### Délai

90. (2) The Commission may request a ruling at any time, but a request by any other person must be made before the June 30 following the year to which the question relates.

90. (2) La Commission peut faire la demande de décision à tout moment, et toute autre personne, avant le 30 juin suivant l'année à laquelle la question est liée.

#### Determination of questions

#### Règlements des questions

90.1 If a question specified in section 90 arises in the consideration of a claim for benefits, a ruling must be made by an authorized officer of the Canada Revenue Agency, as set out in that section.

90.1 Si, au cours de l'examen d'une demande de prestations, une question prévue à l'article 90 se pose, le fonctionnaire autorisé de l'Agence du revenu du Canada rend une décision sur cette question comme le prévoit cet article.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-198-23  
**STYLE OF CAUSE:** WEI CHEN v. AGC  
  
**PLACE OF HEARING:** TORONTO, ON  
  
**DATE OF HEARING:** JULY 18, 2023  
  
**JUDGMENT AND REASONS:** O'REILLY J  
  
**DATED:** SEPTEMBER 25, 2023

**APPEARANCES:**

Wei Chen

FOR THE APPLICANT

Sandra Doucette

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Toronto, ON

FOR THE RESPONDENT