



Citation: *SS v Canada Employment Insurance Commission*, 2024 SST 279

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: S. S.

Respondent: Canada Employment Insurance Commission
Representative: J. Lachance

Decision under appeal: General Division decision dated January 15, 2024
(GE-23-3298)

Tribunal member: Shirley Netten

Decision date: March 19, 2024

File number: AD-24-161

Decision

[1] Leave to appeal is granted and the appeal is allowed. S. S.'s (the Claimant's) appeal can proceed at the General Division even though it was late.

Overview

[2] The Canada Employment Insurance Commission (Commission) refused to backdate the Claimant's employment insurance (EI) claim to December 11, 2022. The Commission also refused to pay EI benefits from April 9, 2023 because the Claimant had lost her employment due to misconduct, and because the Claimant was not available for work.

[3] The reconsideration decision was dated August 2, 2023, and the Claimant appealed to the General Division on November 21, 2023. This was more than two months after the appeal deadline. The General Division did not accept the late appeal because the Claimant didn't explain why she was late.

The application to the Appeal Division can proceed

[4] The Claimant was also late in filing her application to the Appeal Division. She received the General Division decision on January 24, 2024. She communicated with the Tribunal on six separate occasions between then and February 27, 2024, when her application was finally successfully transmitted. I am satisfied that the Claimant has a reasonable explanation for applying late to the Appeal Division. Her application to the Appeal Division can proceed.

The parties agree on the outcome of the appeal

[5] The parties participated in a settlement conference. They agree that I should give the Claimant permission to appeal, allow her appeal, and accept her late appeal to the General Division. Then, the General Division would hear the Claimant's appeal on the issue of backdating her EI claim.

I accept the proposed outcome

[6] The General Division proceeded in a way that was unfair to the Claimant. The member asked her to respond to questions relating to a test for late appeals that no longer applies.¹ Then, the member could not understand the Claimant's response. Despite follow-up messages from the Claimant expressing confusion and asking for help, the member proceeded to make her decision on the basis that the Claimant provided no reason for appealing late. The Claimant was misled about the test she had to meet, and she was not given a fair opportunity to clarify the information she provided. This allows me to step in.²

[7] Having reviewed the file and the Claimant's response to the General Division, I accept the parties' agreement that there was a reasonable explanation for the Claimant's delay in applying. The Claimant continued to communicate with Service Canada about her EI claim and, eventually, they referred her to the Tribunal.³ So, the Claimant's appeal to the General Division can proceed even though it was late.

[8] The General Division should confirm the issue(s) under appeal before proceeding. The Commission has agreed to send the General Division the revised decisions made by Service Canada on the issues of misconduct and availability. It may also be helpful for the Commission to outline for the General Division and the Claimant what benefits have since been paid to the Claimant, noting any possible negative impact if the claim is eventually backdated.

Conclusion

[9] The appeal is allowed. The Claimant's late appeal to the General Division can proceed.

Shirley Netten
Member, Appeal Division

¹ See GD5-1. The test for late appeals is now found in section 27 of the *Social Security Tribunal Rules of Procedure*.

² See section 58(1)(a) of the *Department of Employment and Social Development Act*.

³ See GD6-1.