



Citation: *OM v Canada Employment Insurance Commission*, 2024 SST 766

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant:

O. M.

Respondent:

Canada Employment Insurance Commission

Representative:

N. Janssen

Decision under appeal:

General Division decision dated December 19, 2023
(GE-23-3141)

Tribunal member:

Jude Samson

Type of hearing:

In Writing

Decision date:

July 2, 2024

File number:

AD-24-168

Decision

[1] O. M. is the Claimant in this case. I'm allowing his appeal and returning the file to the General Division for reconsideration.

Overview

[2] The Claimant applied for Employment Insurance (EI) regular benefits in June 2023. Later that month, the Canada Employment Insurance Commission (Commission) told the Claimant that it was refusing to pay him benefits because he had voluntarily left his job without just cause.

[3] The Claimant asked the Commission to reconsider its decision. The Commission's reconsideration decision is dated August 17, 2023. Unfortunately for the Claimant, the Commission refused to change its initial decision. If the Claimant disagreed with the reconsideration decision, the Commission told him he could appeal it to the Tribunal's General Division within 30 days.

[4] The Claimant appealed the Commission's reconsideration decision to the Tribunal's General Division on November 9, 2023, so it appeared to be late.¹

[5] The General Division sent the Claimant a letter asking for some more information about his late appeal. Having not seen a response from the Claimant, the General Division found that the appeal was late, and refused to give the Claimant more time to appeal.

[6] The General Division failed to provide the Claimant with a fair process. So, I'm allowing the Claimant's appeal and returning the matter to the General Division for it to reconsider whether the Claimant should be given more time to appeal.

¹ Whether the Claimant's appeal was late depends on when he received the Commission's reconsideration decision.

Request for more time – refused

[7] On May 2, 2024, the Claimant wrote to the Appeal Division asking for more time because he was out of the country. On May 7, 2024, I responded to the Claimant's letter and asked what deadline he wanted to extend and by how long. I asked the Claimant to respond by May 17, 2024, but no response has ever been received. Given that the Commission is conceding the appeal, I'm refusing the Claimant's vague request.

Issues

[8] The issues in this appeal are:

- a) Did the General Division fail to provide the Claimant with a fair process by overlooking his request for more time to respond to its letter?
- b) If so, how should I fix the General Division's error?

Analysis

[9] I can intervene in this case if the General Division failed to provide the Claimant with a fair process.²

The General Division failed to provide the Claimant with a fair process

[10] The General Division received the Claimant's Notice of Appeal on November 9, 2023. Based on the date of the Commission's reconsideration decision, the appeal appears to be late, but the Claimant didn't complete relevant parts of the Notice of Appeal form. So, the General Division wrote to the Claimant asking for more information.

[11] The General Division's request for more information is dated December 4, 2023. It asked for the Claimant's response by December 14, 2023.

[12] The General Division decision is dated December 19, 2023, but it wasn't sent to the parties until the next day. Also on December 19, 2023, the Claimant asked for more

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

time to respond to the General Division's letter. But because of the time needed to process documents, it seems unlikely that the Claimant's request was brought to the member's attention before the decision was sent to the parties.

[13] The Commission seems to acknowledge that the General Division failed to provide the Claimant with a fair process. I agree. Because of the Tribunal's processing times, the decision was sent to the parties even though there was an outstanding request from the Claimant for more time to answer the General Division's questions.

The file returns to the General Division for reconsideration

[14] The Commission isn't opposed to me sending the appeal back to the General Division for reconsideration. This should allow the Claimant to provide some explanation about why his appeal appears to be late. The General Division will also have to reconsider giving him more time to appeal.

[15] I agree that returning the file to the General Division is the best way to fix the error in this case.³

Conclusion

[16] I'm allowing the Claimant's appeal. The General Division failed to provide the Claimant with a fair process. As a result, I'm returning the file to the General Division to reconsider whether the Claimant should be given more time to appeal.

[17] Before closing, it's worth highlighting section 13(2) of the *Social Security Tribunal Rules of Procedure*, which says that all parties, including the Claimant, must:

- Communicate with the Tribunal and respond to its requests; and
- Meet the deadlines the Tribunal sets out.

³ Section 59(1) of the DESD Act gives me this power.

[18] Considerable resources have already been spent because of the Claimant's failure to meet these duties. It's also important for the Claimant to follow these rules if he wants the Tribunal to hear his story and to decide his case in a fair way.

Jude Samson
Member, Appeal Division