



[TRANSLATION]

Citation: *Canada Employment Insurance Commission v SC*, 2024 SST 658

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Jessica Earles

Respondent: S. C.

Decision under appeal: General Division decision dated March 4, 2024
(GE-24-445)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference

Hearing date: June 4, 2024

Hearing participants: Appellant's representative
Respondent

Decision date: June 11, 2024

File number: AD-24-245

Decision

[1] The Commission's appeal is allowed. The Claimant's request for a reconsideration of the February 22, 2023, decision was filed late, and the Commission properly exercised its discretion when it denied the extension of time.

Overview

[2] The Appellant (Claimant) applied for Employment Insurance (EI) benefits on February 8, 2023, May 24, 2023, and December 4, 2023. After each of these claims, the Respondent (Commission) refused to pay him benefits.

[3] After the Claimant applied for benefits on December 4, 2023, the Commission made a decision on December 18, 2023. It refused to pay him benefits because he did not have enough insurable hours to qualify given the February 22, 2023, misconduct decision.

[4] Two days later, on December 20, 2023, the Claimant requested a reconsideration of the misconduct decision.

[5] On January 22, 2024, the Commission made a decision notifying the Claimant that he had not filed his reconsideration request within the required time limit, given that more than 30 days had passed since the February 22, 2023, decision. It refused to reconsider the February 22, 2023, decision.¹ The Claimant appealed the refusal to the Tribunal's General Division.

[6] The General Division found that the Claimant had filed his reconsideration request within the 30-day time limit set out in the law. So, the Commission had not exercised its discretion [judicially] by refusing to reconsider the December 18, 2023, decision on misconduct because the Claimant had made his reconsideration request by the December 20, 2023, deadline.

¹ GD3-45

[7] The Commission was given permission to appeal the General Division decision to the Appeal Division. It argues that the General Division based its decision on an erroneous finding of fact and made an error of law when it found that the Commission exceeded its discretion by refusing the Claimant more time to request a reconsideration.

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

Issues

[9] Did the General Division ignore the evidence before it and make an error in finding that the Claimant's notice of appeal was filed within the time limit set out in the law?

[10] Did the General Division make an error when it found that the Commission exceeded its discretion by refusing an extension of time?

Preliminary remarks

[11] It is well established that I have to consider only the evidence that was before the General Division in deciding this appeal.²

[12] So, I listened to the recording of the General Division hearing held on February 28, 2024.

Analysis

Appeal Division's mandate

[13] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.³

² *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

³ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

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

[15] 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, I must dismiss the appeal.

Did the General Division ignore the evidence before it and make an error in finding that the Claimant's notice of appeal was filed within the time limit set out in the law?

Did the General Division make an error when it found that the Commission exceeded its discretion by refusing an extension of time?

[16] The General Division found that the Claimant had filed his reconsideration request within the 30-day time limit set out in the law. So, the Commission had not exercised its discretion judicially by refusing to reconsider the December 18, 2023, decision because the Claimant had made his reconsideration request by the December 20, 2023, deadline.

[17] The evidence shows that the Claimant filed an initial EI claim effective February 5, 2023.

[18] On February 22, 2023, the Commission made two decisions. A disqualification was imposed effective January 15, 2023, because the Commission decided that the Claimant was dismissed from his job at X because of misconduct. Also, the Commission decided that he did not have just cause for voluntarily leaving X.

[19] On December 20, 2023, the Claimant asked the Commission to reconsider the decision about his dismissal from X, where his last day of work was January 17, 2023, and about his voluntary leaving from X, which took place on September 9, 2022.⁴

[20] On January 22, 2024, the Commission refused the reconsideration request because it was late, and the Claimant had not shown a continuing intention to request a reconsideration.⁵ The Claimant appealed the refusal to the General Division.

[21] The General Division found that the Commission made three decisions about misconduct: on February 22, 2023; June 22, 2023; and December 18, 2023. It found that the Claimant made a claim for benefits on December 4, 2023, that the Commission made an initial decision on that claim on December 18, 2023, and that the Claimant made his reconsideration request within the time limit set out in the law—that is, on December 20, 2023.

[22] But the Commission's June 22, 2023, and December 18, 2023, decisions following the Claimant's reactivation request, concern only the Claimant's lack of insurable hours to qualify for benefits.

[23] The June 22, 2023, and December 18, 2023, decisions refer to misconduct only to explain that the Claimant did not have enough insurable hours to recover from the disqualification imposed for misconduct on February 22, 2023.⁶ These are not new decisions about the Claimant's misconduct.

[24] In an interview with the Commission, the Claimant said that he did not receive the February 22, 2023, decision letter, but that he was aware of his disqualification because of his dismissal from X.⁷

[25] At the hearing, the Claimant testified that an agent had notified him of the February 22, 2023, decision, and of his right to a reconsideration within 30 days. Shortly

⁴ GD3-42

⁵ GD3-45

⁶ GD3-26, GD3-38

⁷ GD3-42

after, he called the Commission back and was informed that he could get the reconsideration forms online. He said he did not act at that time because he needed help completing his application.⁸

[26] For these reasons, I am of the view that the General Division made an error by ignoring the evidence before it and finding that the Claimant was not late when he filed his request for a reconsideration of the initial February 22, 2023, decision on December 20, 2023.

[27] The General Division also made an error in finding that the Commission had not exercised its discretion judicially by refusing to reconsider the December 18, 2023, decision because the Claimant had made his request within the time limit set out in the law.

[28] I am therefore justified in intervening.

Remedy

[29] In my view, 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.⁹

[30] In my view, the Claimant was late when he filed his request for a reconsideration of the initial February 22, 2023, decision on December 20, 2023.

[31] At the hearing, the Claimant testified that he was notified of the February 22, 2023, decision and that he had the right to a reconsideration within 30 days. Shortly after, he called the Commission back and was informed that he could get the reconsideration forms online.

[32] I now have to decide whether the Commission exercised its discretion judicially when it denied an extension of the 30-day time limit to request a reconsideration.

⁸ At 17:01 of the recording of the General Division hearing.

⁹ In accordance with the Appeal Division's powers under section 59(1) of the *Department of Employment and Social Development Act*.

[33] The Commission may allow a longer period to request a reconsideration if it is satisfied that there is a reasonable explanation for requesting a longer period and the claimant has demonstrated a continuing intention to request a reconsideration.¹⁰

[34] The Commission considered that the Claimant was aware of the two February 22, 2023, decisions and that he waited until December 20, 2023, to request a reconsideration—more than nine months.

[35] The Commission considered that the Claimant mentioned that he needed help from an agent to challenge the misconduct decision. It found that he had not made efforts to do so before December 20, 2023, even though he was capable of dealing with his personal obligations. The Commission determined that he did not give a reasonable explanation for requesting an extension of time.

[36] The Commission also found that the Claimant preferred to return to the labour market rather than wait for EI. He did not act until after the December 18, 2023, refusal of benefits. The Commission found that the Claimant had not shown a continuing intention to request a reconsideration of the February 22, 2023, decision.

[37] In my view, the Commission did not act in bad faith or act for an improper purpose or motive. It did not ignore a relevant factor, consider an irrelevant factor, or act in a discriminatory manner when it found that the Claimant had not given a reasonable explanation for the 271-day delay in requesting a reconsideration.

[38] In my view, the Commission exercised its discretion judicially when it found that the Claimant did not have a reasonable explanation for the delay in requesting a reconsideration and that he had not shown a continuing intention to request a reconsideration.

[39] So, I have no authority to change the Commission's refusal decision.

¹⁰ See section 112 of the *Employment Insurance Act*; and section 1(1) of the *Reconsideration Request Regulations*.

Conclusion

[40] The Commission's appeal is allowed. The Claimant's request for a reconsideration of the February 22, 2023, decision was filed late, and the Commission properly exercised its discretion when it denied the extension of time.

Pierre Lafontaine
Member, Appeal Division