



Citation: *RA v Canada Employment Insurance Commission*, 2024 SST 1099

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	R. A.
Respondent:	Canada Employment Insurance Commission
Representative:	Louis Gravel

Decision under appeal:	General Division decision dated June 10, 2024 (GE-24-1099)
-------------------------------	---

Tribunal member:	Glenn Betteridge
Type of hearing:	Videoconference
Hearing date:	September 6, 2024
Hearing participants:	Appellant Respondent's representative
Decision date:	September 16, 2024
File number:	AD-24-428

Decision

[1] I am dismissing R. A.'s appeal.

[2] He and the Canada Employment Insurance Commission (Commission) agreed that the General Division made an error. They also agreed that I should fix the error by making the decision.

[3] I accept their agreement. That doesn't change the outcome. He ran out of time to appeal the Commission's reconsideration decision and I can't extend the time. So, his appeal won't go ahead.

Overview

[4] R. A. is the Claimant. He left his job and made a claim for Employment Insurance (EI) regular benefits.

[5] The Commission decided he was disqualified from benefits because he voluntarily left his job without just cause.¹ It upheld its decision on reconsideration and mailed the Claimant its notice of decision (dated November 4, 2022).

[6] On March 17, 2024, the Tribunal received his appeal of that decision.

[7] The General Division decided his appeal was late. Less than one year has passed since he got the Commission's reconsideration decision. But it didn't extend the time because he didn't give a reasonable explanation why his appeal was late. So, it decided his appeal could not go forward.

[8] The Appeal Division gave him permission to appeal the General Division decision.

¹ See sections 29(c) and 30(1) of the *Employment Insurance Act* (EI Act).

[9] The parties now agree the General Division made an error. They also agree that I should make the decision the General Division should have made. That is what I have done. It doesn't change the outcome in his case.

Issues

[10] I have to decide three issues.

- Should I accept the parties' agreement that the General Division made a legal error by not deciding when the Commission communicated its reconsideration decision to the Claimant?
- Should I accept the parties' agreement that I should fix that error by making the decision the General Division should have made?
- Should I extend the time for the Claimant to file his appeal with the General Division?

I accept the parties' agreement about the General Division's error, and how I should fix it

[11] At the hearing, the parties agreed to the following:

- The General Division made a legal error when it didn't decide the date the Commission communicated its decision to the Claimant.
- I should fix the General Division's error by making the decision it should have made.

[12] I accept the parties' agreement about the error. The law that the General Division had to apply is based on the day the Commission communicated its decision to the Claimant. The Claimant had 30 days from that day to file his appeal.² The Claimant loses his right to appeal if more than one year has passed since that day.³

² See section 52(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).

³ See section 52(2) of the DESD Act.

[13] To apply the legal test, the General Division had to decide the date the Commission communicated its decision to the Claimant. It didn't do that.⁴ It found that, "At some point however, the [Claimant] did become aware of his right to appeal the decision to the Tribunal and took this step."⁵ So, the General Division made a legal error when it didn't properly use the legal test.

[14] I also agree that I should fix the General Division's error by making the decision it should have made. The General Division gave the Claimant an opportunity to know the case he had to meet.⁶ And it gave him a full and fair opportunity to present his evidence and arguments.⁷

The Claimant can't appeal the Commission's reconsideration decision

What the law says about new evidence and communicating a decision

[15] As a general rule, the Appeal Division can't accept new evidence.⁸ None of the exceptions to that rule apply in the Claimant's case. This means I can consider only the evidence that was before the General Division.

[16] The Commission has the burden to show that it communicated its decision to the Claimant.⁹

[17] But the laws that apply to EI decisions and appeals don't say what it means for the Commission to "communicate a decision" to someone.¹⁰ And the courts haven't either.

⁴ See paragraphs 16 and 17 of the General Division decision.

⁵ See paragraph 18 of the General Division decision.

⁶ The Tribunal sent him the Commission's reconsideration file (GD3) and arguments (GD4).

⁷ The Claimant had an opportunity to say when he received the Commission's decision, say whether his appeal was late, and give a reasonable explanation if it was late. The appeal form (GD2) asked him to give this information. The letter that the Tribunal sent him acknowledging his appeal told him that his appeal "appears to be late," and told him how to send documents to the Tribunal.

⁸ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

⁹ See paragraph 39 in *Bartlett v Canada (Attorney General)*, 2012 FCA 230, citing *Atlantic Coast Scallop Fishermen's Assn v Canada (Minister of Fisheries and Oceans)* (1995), 189 NR 220 (FCA).

¹⁰ I am referring to the DESD Act and the EI Act.

[18] The courts have decided what this means under another federal law with a deadline for a person to file a legal challenge.¹¹ For a decision-maker to communicate its decision, the decision-maker:

- Has to take positive action.
- Has to advise the person of the substance of the decision.¹²

The evidence I considered

[19] On his appeal form, the Claimant didn't write the date from the reconsideration decision letter.¹³ He wrote that he received the reconsideration decision letter on September 21, 2022. He didn't fill in the "late appeals" part of the form.

[20] Here is the Commission's evidence from the reconsideration file:

- The Commission's original decision letter is dated September 1, 2022. The Commission mailed it to the X Nathaniel Crescent address.¹⁴
- The Commission received the Claimant's reconsideration request on September 21, 2022. He used the X Nathaniel Crescent address.¹⁵
- On October 27, 2022, the Commission emailed the Claimant about his reconsideration request, using the email he gave on his request.¹⁶

¹¹ See section 18.1(2) of the *Federal Courts Act*, which says: "An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal [...]."

¹² See *Bartlett v Canada (Attorney General)*, 2012 FCA 230; *Atlantic Coast Scallop Fishermen's Association, et al. v. Canada (Minister of Fisheries and Oceans)*, (1995) 189 NR 220; *Peace Hills Trust Co v. Moccasin*, 2005 FC 1364; and *R & S Industries Inc. v Canada (National Revenue)*, 2016 FC 275.

¹³ See GD2-4.

¹⁴ See GD2-25.

¹⁵ See GD2-26.

¹⁶ See GD2-26 and GD2-29.

- Between October 27 and November 4, 2022, the Commission called the Claimant three times about his reconsideration request. Each time his phone was busy.¹⁷
- The Commission's reconsideration decision letter is dated November 4, 2022. The Commission mailed it to the X Nathaniel Crescent address.¹⁸

[21] There is no evidence in the reconsideration file that shows the reconsideration decision letter was returned to the sender.

[22] The Claimant didn't respond to the General Division's letter (sent by email) asking for an explanation about why his appeal appeared to be late.¹⁹

The Claimant ran out of time to appeal the Commission's reconsideration decision

[23] I have decided the Claimant filed his appeal more than one year after the Commission communicated its reconsideration decision to him. So, section 55(2) of the *Department of Employment and Social Development Act* (DESD Act) says he ran out of time to bring his appeal. I have no power to extend the time.

[24] At the Appeal Division hearing, the Claimant asked me to make the decision because he said he could not remember what happened two years before. His argument for appealing the General Division decision was that he had just cause for leaving his job.²⁰ He also says he was in financial need. In other words, he argued why he is entitled to EI benefits. But this wasn't the issue the General Division decided.

[25] The Commission argues that the Claimant should have received the reconsideration decision "around November 14, 2022."²¹ It says it mailed the reconsideration decision to the address the Claimant used on his reconsideration request. This was the same address it used on the initial decision—which the Claimant

¹⁷ See GD3-30.

¹⁸ See GD2-25.

¹⁹ See GD5-1.

²⁰ See AD1-7.

²¹ See AD3-5.

received. It says that generally the Tribunal decides that Canada Post delivers mail within 10 days in Canada.²² And I can't assume the Claimant moved, changed his mailing address, or didn't get the reconsideration decision because he hasn't given any proof of those things.

[26] Finally, the Commission argues that the facts show the Claimant was more than one year late filing his appeal. So, it says I have to follow 52(2) of the DESD Act.²³

[27] Based on the evidence I have weighed and the law, I accept the Commission's argument.

[28] I find it more likely than not the Commission took the positive step of sending the Claimant the reconsideration decision letter, dated November 4, 2022. It explained the substance of its decision in that letter. There is no evidence that goes against this evidence. And I have no other reason to doubt it.

[29] I am following the Tribunal's practice of accepting that letter mail is delivered 10 days after it is sent, unless a person provides some proof that they didn't receive it. This makes sense when I look at delivery times for Canada Post letter mail.²⁴ If the Claimant had said, "I didn't get the reconsideration decision letter," that might have shown me that he didn't receive it.

[30] The Claimant gave no proof or explanation about why he didn't file his appeal on time. He had the opportunity to explain why on the appeal form. And the General Division asked him to respond to its letter asking him questions. He didn't do either.

²² At AD3-5 the Commission refers two decisions: *KC v Minister of Employment and Social Development*, 2017 SSTADIS 238 at paragraph 8; and *AG v Canada Employment Insurance Commission*, 2018 SST 1168 at paragraph 15.

²³ See AD3-1 and AD3-5.

²⁴ In 2022, Canada Post says it delivered in-Canada letter mail on time 95% of the time. This means it delivered mail within a community within two business days, within a province within three business days, and between provinces within four business days. See Canada Post Corporation, 2023 Annual Report (for the period ending December 31, 2023), at www.canadapost-postescanada.ca/cpc/doc/en/aboutus/financialreports/2023-annual-financial-report.pdf. Canada Post didn't publish on-time information in its 2022 Annual Report.

[31] So, I find it's more likely than not the Commission communicated its reconsideration to the Claimant on November 14, 2022. This is the day he received the Commission's reconsideration decision. He filed his appeal more than one year after that, on March 17, 2024. Because of that delay, the law says he can't appeal. In other words, he lost his right to appeal the Commission's decision.

Conclusion

[32] I am dismissing the Claimant's appeal.

Glenn Betteridge
Member, Appeal Division