



Citation: *WG v Canada Employment Insurance Commission*, 2024 SST 1467

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: W. G.

Respondent: Canada Employment Insurance Commission
Representative: Adam Forsyth

Decision under appeal: General Division decision dated June 11, 2024
(GE-24-1570)

Tribunal member: Solange Losier

Decision date: October 2, 2024

File number: AD-24-476

Decision

[1] The appeal is allowed. The General Division made important errors of fact. The case will go back to the General Division for reconsideration.

Background

[2] W. G. is the Claimant in this case. He applied for and received Employment Insurance (EI) benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that he voluntarily left his job without just cause, so he wasn't entitled to get EI benefits. This resulted in a notice of debt for the overpayment.¹

[4] The Claimant asked the Commission to reconsider this decision. The Commission didn't change its position.² The Claimant then appealed to the General Division of the Tribunal.

[5] The General Division concluded that the Claimant's appeal wasn't brought in time.³ It found that his appeal was filed more than one year after the reconsideration decision was communicated to him. Because of that, his appeal couldn't proceed as the law doesn't allow appeals filed more than one year after the date of communication.⁴

[6] The Claimant appealed to the Appeal Division of the Tribunal. He got permission to appeal because he had an arguable case.

[7] With the assistance of the Appeal Division, the parties have come to agreement on how to resolve this appeal.

¹ See notice of debt at page GD3-44.

² See Commission's reconsideration decision at page GD3-42.

³ See General Division decision at pages AD1A-1 to AD1A-4.

⁴ See section 52(2) of the *Department of Employment and Social Development Act* (DESD Act).

The parties agree on the outcome of the appeal

[8] The Claimant and Commission both agree that the General Division made important errors of fact.⁵ To fix the error, they agree that the appeal should be returned to the General Division for reconsideration.

I accept the parties' agreement

[9] An appeal to the Tribunal's General Division must be brought within 30 days from when a decision was communicated.⁶ The General Division may allow further time, but not more than one year from when a decision is communicated.⁷

[10] The General Division found that the reconsideration decision was verbally communicated to the Claimant on February 17, 2023.⁸ It relied on the summary notes from a telephone conversation between the Claimant and a Service Canada agent.⁹

[11] The General Division also found that the Claimant's appeal was brought to the General Division on April 23, 2024.¹⁰ It concluded that his appeal was received more than one year after the reconsideration decision was communicated to him.¹¹ It determined that his appeal couldn't proceed because it wasn't brought in time.¹²

[12] The Claimant and Commission agree that the General Division made the following important factual errors in paragraph 7 of its decision:

- The General Division said that it wrote to the Claimant on August 23, 2023, to ask him about the conversation that took place on April 8, 2022. It found that he hadn't replied by the deadline of September 7, 2023, or as of the date of its decision.

⁵ See Commission's written submissions and proposed outcome at pages AD5-1 to AD5-5; Tribunal's letter to the Claimant at pages AD6-1 to AD6-3 and Claimant's agreement to the errors and outcome at page AD7-1.

⁶ See section 52(1)(a) of the DESD Act.

⁷ See section 52(2) of the DESD Act and section 27 of the Social Security Tribunal Regulations.

⁸ See paragraphs 5–6 of the General Division decision.

⁹ See pages GD3-40 to GD3-41.

¹⁰ See paragraph 10 of the General Division decision.

¹¹ See paragraphs 11 and 15 of the General Division decision.

¹² See paragraph 17 of the General Division decision.

[13] The evidence in the file shows that the letter to the Claimant was dated May 20, 2024 (not August 23, 2023) and his deadline to reply was June 3, 2023 (not September 7, 2023).¹³

[14] The evidence also shows that the conversation he had with the Commission was February 17, 2023 (not April 8, 2022).¹⁴

[15] As well, the evidence shows that Claimant did reply to the General Division's letter on May 28, 2024—which was before the deadline and before the decision was issued.¹⁵

[16] In this case, the parties agree that the General Division's factual errors were important enough because it could have affected the outcome. They also agree that the best way to fix the errors is to return the matter to the General Division for reconsideration.

[17] I agree with the parties. But I also want to acknowledge that the General Division did in fact outline the correct dates in another part of its decision.¹⁶ Even so, I'm inclined to accept the parties' agreement as they both agree that the General Division may have based its decision on factual errors that were important enough to have possibly impacted the outcome.

[18] Accordingly, I accept the parties' agreement—the General Division made important errors of fact in its decision and this matter has to be sent back to the General Division for reconsideration.¹⁷

– **Next steps**

[19] The Appeal Division hearing scheduled on October 16, 2024, is no longer necessary and has been cancelled.

¹³ See pages GD6-1 to GD6-3.

¹⁴ See pages GD3-40 to GD3-41.

¹⁵ See page GD7-1.

¹⁶ See paragraphs 13–14 of the General Division decision.

¹⁷ See sections 58(1)(c) and 59(1) of the DESD Act.

[20] Since the matter is returning to the General Division for reconsideration, it will first have to decide whether the appeal is late. The underlying “substantive issue” (i.e., voluntary leave) can only be addressed if the Claimant is successful on the late appeal issue.

Conclusion

[21] The appeal is allowed. The General Division made important errors of fact. The case will go back to the General Division for reconsideration.

Solange Losier
Member, Appeal Division