



Citation: *JS v Canada Employment Insurance Commission*, 2024 SST 1576

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: J. S.

Respondent: Canada Employment Insurance Commission
Representative: Dinah Bélanger

Decision under appeal: General Division decision dated September 25, 2024
(GE-24-2972)

Tribunal member: Solange Losier

Decision date: November 1, 2024

File number: AD-24-631

Decision

[1] The Claimant's appeal is allowed. The parties agree and I accept that the General Division made an important error of fact. The matter will return to the General Division for reconsideration.

Background

[2] J. S. is the Claimant in this case. She applied for Employment Insurance (EI) benefits.

[3] The Commission decided she wasn't available for work from May 5, 2024, to June 10, 2024, due to restrictions.¹

[4] The General Division concluded that the Claimant's appeal wasn't brought in time and that she hadn't provided an explanation for why the appeal was late.² Because of that, it said that her appeal couldn't proceed.

[5] The Claimant appealed to the Appeal Division of the Tribunal.³ I gave her permission to appeal because she had an arguable case that the General Division based its decision on an important error of fact.

[6] I held a case conference on November 1, 2024 because the Claimant had some follow up questions about a letter I sent her.⁴ The Commission and the Claimant attended. They came to an agreement on the outcome of this appeal. This written decision reflects their agreement.

¹ See Commission's initial decision at page GD3-22 and reconsideration decision at page GD3-29.

² See General Division decision at pages AD1A-1 to AD1A-4.

³ See Application to the Appeal Division at pages AD1-1 to AD1-7.

⁴ See pages AD6-1 to AD6-3 and AD0A-1 to AD0A-2.

The parties agree on the outcome of the appeal

[7] The Claimant and Commission agree that the General Division based its decision on an important error of fact.⁵ To fix the error, they agree that the appeal should be returned to the General Division for reconsideration.⁶

I accept the parties' agreement

[8] An appeal to the Tribunal's General Division must be brought within 30 days from when a decision was communicated to an Appellant.⁷ The General Division can give more time to appeal if the Appellant has a reasonable explanation for why they are late.⁸

[9] The General Division decided that the Claimant's appeal was late. It said that the Claimant hadn't provided an explanation for the late appeal in her appeal forms and she didn't respond to the letter it sent asking why her appeal was late.⁹ Because of that, her appeal couldn't proceed.¹⁰

– The General Division overlooked the telephone notes and information she provided her in appeal forms

[10] The Claimant and Commission agree that the General Division based its decision on an important error of fact when it concluded that she hadn't provided an explanation for why the appeal was late. Specifically, the General Division overlooked important telephone notes in the file and the explanation she provided in her appeal forms.

[11] There are three telephone notes that show the Claimant called the Tribunal and spoke to staff on August 28, 2024; September 9, 2024, and September 25, 2024.

⁵ See section 58(1)(c) of the *Department of Employment and Social Development* (DESD Act).

⁶ See section 59(1) of the DESD Act.

⁷ See section 52(1)(a) of the DESD Act.

⁸ See section 27(2) of the *Social Security Tribunal Rules of Procedure* (SST Rules).

⁹ See paragraph 16 of the General Division decision.

¹⁰ See paragraphs 1, 5, 9, 16 and 17 of the General Division decision.

[12] A copy of the telephone notes were added to the Appeal Division file, but I have copied the relevant parts of the first two telephone notes as follows.¹¹

Telephone note #1

August 28, 2024

The appellant called us this morning because she wanted to know if we read her reason for filing her appeal late. I told her that I can see an explanation in her notice of appeal. I also told her that I would leave a note on her file saying that she called to justify it. I finished by saying that we should send her documents from EI probably in the coming days.

Telephone note #2

September 9, 2024

To make sure we had received her NoA¹², the appellant gave us a call. I informed her that her case was open and that we were awaiting her recon file and SC's¹³ representation. I described those documents to her and said that as soon as we have a copy, we will provide it to her. She told me that she no longer had internet access and asked if she needed to continue sending evidence that she was looking for work. I clarified that she could choose to do so if she thinks it will support her appeal.

[13] The Claimant called the Tribunal on August 28, 2024, and September 9, 2024, to confirm that she had provided an explanation for why the appeal was late. According to the telephone notes above, Tribunal staff confirmed that she had provided an explanation in her notice of appeal forms.

[14] And when I look at her appeal forms, it seems that the Claimant did put an explanation, but in the wrong spot. She wrote "they said they send me a letter in June but I never receive [the] letter".¹⁴

[15] The telephone notes above were accessible to the General Division before it made its decision on September 24, 2024.

¹¹ See pages AD3-1 to AD3-3.

¹² This is referring to the "Notice of Appeal."

¹³ This is referring to "Service Canada".

¹⁴ See page GD2-5. She put the explanation in box 7, instead of box 9 of the appeal forms.

[16] The General Division didn't consider the Claimant's explanation that she hadn't received the Commission's letter in June (i.e. the reconsideration decision).

[17] The General Division overlooked the telephone notes in the file. Importantly, the Claimant told the Tribunal she didn't have email access as of September 9, 2024.

[18] Accordingly, I accept the parties' agreement—the General Division made an important error of fact in its decision when it determined that she hadn't provided an explanation for the late appeal. It overlooked the telephone notes which were important because it may have affected the outcome. The Claimant wasn't able to respond to the General Division's letter (dated September 13, 2024) because she didn't have email access. This matter has to be sent back to the General Division for reconsideration.¹⁵

[19] The General Division might consider holding a case conference if it needs further information from the Claimant. The Claimant noted that she has some difficulty writing things down. As well, if the Claimant has limited access to the internet, the Tribunal can also send her documents by mail.

[20] The Claimant understands that the General Division can't decide the "availability" issue and entitlement to EI benefits without first deciding the late appeal issue.

[21] The Appeal Division hearing scheduled on November 27, 2024, is cancelled.

Conclusion

[22] The appeal is allowed. The matter will return to the General Division for reconsideration.

Solange Losier
Member, Appeal Division

¹⁵ See sections 58(1)(c) and 59(1) of the DESD Act.