



Citation: *MD v Canada Employment Insurance Commission*, 2024 SST 1622

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. D.

Respondent: Canada Employment Insurance Commission
Representative: Daniel McRoberts

Decision under appeal: General Division decision dated October 3, 2024
(GE-24-3181)

Tribunal member: Solange Losier

Decision date: December 2, 2024

File number: AD-24-738

Decision

[1] The appeal is allowed. The parties agree and I accept that the Tribunal made an error. The Claimant's appeal to the General Division was made late, but he has a reasonable explanation. The matter will go back to the General Division for reconsideration on the misconduct issue.

Background

[2] M. D. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits after he stopped working.

[3] The Canada Employment Insurance Commission (Commission) decided that he wasn't entitled to get benefits because he lost his job due to his own misconduct. The Claimant appealed that decision to the General Division.

[4] The General Division concluded that his appeal was brought late, more than one year after the Commission's reconsideration decision was communicated to him.¹ Because of that, his appeal couldn't go ahead.

[5] The Claimant and the Commission agree that the Tribunal made an error and how to fix that error.

The parties agree on the outcome of the appeal

[6] The Claimant and the Commission agree that the Tribunal failed to follow a fair process. To fix the error, they agree that I should decide the timing issue. They also agree that the file should be returned to the General Division for reconsideration on the misconduct issue.

¹ See General Division decision at pages ADN1A-1 to ADN1A-4.

I accept the parties' agreement

[7] The Claimant in this case was disqualified from getting EI benefits because the Commission said he lost his job due to his own misconduct.²

[8] An appeal to the General Division must be brought within 30 days from when the reconsideration decision is communicated to a person.³ The General Division can extend the time if the person provides a reasonable explanation for why they're late.⁴ However, an appeal can't be brought more than one year after the day on which the reconsideration decision is communicated to a person.⁵

[9] The General Division decided that the Commission's reconsideration decision was communicated to the Claimant between December 12, 2022, and January 31, 2023.⁶ It found that the Tribunal received his appeal on March 1, 2024.⁷ It concluded that the Claimant's appeal was filed more than one year after the reconsideration decision was communicated to him. Because of that, his appeal couldn't proceed.⁸

[10] The Claimant applied to the Appeal Division arguing that his appeal wasn't filed late. He provided a copy of the appeal and an email acknowledgment that shows he submitted it to the General Division on February 20, 2023.

[11] The Tribunal was able to confirm that it hadn't processed the Claimant's email of February 20, 2023, correctly.

[12] Accordingly, I accept the parties' agreement—the Tribunal made an error and failed to follow a fair process because it didn't open an appeal file.

[13] In the circumstances, the parties agree that I should make the following decision on the timing issue:

² See Commission's initial decision at page GD3-59 (dated July 18, 2022) and reconsideration decision (dated December 12, 2022) at page GD3-62.

³ See section 52(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁴ See section 27(2) of the *Social Security Tribunal Rules of Procedure*.

⁵ See section 52(2) of the DESD Act.

⁶ See paragraphs 9–10 of the General Division decision.

⁷ See paragraph 11 of the General Division decision.

⁸ See paragraph 12 of the General Division decision.

- The Commission's reconsideration decision was communicated to the Claimant on December 12, 2022.
- The 30-day deadline to file his appeal to the General Division was January 12, 2022.
- The Claimant filed his appeal to the General Division of the Tribunal on February 20, 2023.
- The Claimant's appeal was filed late, but he had a reasonable explanation for the delay. Specifically, the Commission told the Claimant that it would accept additional information from him. This caused some confusion, and the Claimant's appeal rights weren't clearly communicated to him until January 31, 2023. Plus, the Claimant was experiencing some family issues.

[14] The matter will now return to the General Division to decide the misconduct issue: Should the Claimant be disqualified from receiving EI benefits starting on November 19, 2021?

Conclusion

[15] The Claimant's appeal is allowed. The Tribunal made an error. The Claimant's appeal to the General Division was made late, but he has a reasonable explanation, so I'm giving him more time to appeal. The file will now return to the General Division to decide the misconduct issue.

Solange Losier
Member, Appeal Division