



Citation: *MS v Canada Employment Insurance Commission*, 2025 SST 491

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. S.

Respondent: Canada Employment Insurance Commission
Representative: Erin Tzvetcoff

Decision under appeal: General Division decision dated January 28, 2025
(GE-24-4127)

Tribunal member: Solange Losier

Type of hearing: Videoconference

Hearing date: April 7, 2025

Hearing participants: M. S.
Respondent's representative

Decision date: May 8, 2025

File number: AD-25-70

Decision

[1] The appeal is dismissed. The General Division made an error of jurisdiction when it determined that M. S. (Claimant) was appealing the reconsideration decision dated May 28, 2024.¹ He wasn't appealing that decision.

[2] I will substitute with my own decision. The Claimant was appealing an initial decision dated November 7, 2024, but he appealed it prematurely to the Tribunal.² The Canada Employment Insurance Commission (Commission) hasn't yet rendered a reconsideration decision. And since there is no reconsideration decision, I don't have the jurisdiction to decide that issue.

Overview

[3] The Claimant applied for Employment Insurance regular benefits (benefits) after he stopped working. The Commission decided that he was disqualified from getting benefits because he lost his job due to his own misconduct (this is called an "initial decision" and it was made on April 4, 2024).³ The Claimant asked the Commission to reconsider its decision.

[4] The Commission maintained the misconduct decision on reconsideration (this is called a "reconsideration decision" and it was made on May 28, 2024).⁴

[5] A few months later, the Claimant asked the Commission to reconsider its decision again because he ended up resolving a labour dispute with his employer.⁵

[6] On November 7, 2024, the Commission wrote to the Claimant explaining that they had already rendered a reconsideration decision on May 28, 2024, and that he could appeal that *one* to the Tribunal. At the same time, it also refused to cancel or

¹ A copy of the May 28, 2024 reconsideration decision can be found at page GD3-44.

² A copy of the November 7, 2024 initial decision can be found at page GD3-50.

³ See page GD3-32.

⁴ See page GD3-44.

⁵ See pages GD3-45 to GD4-47. This was the second reconsideration request made by the Claimant.

modify its decision because it said he didn't meet the criteria set out in the law (this was an "initial decision").⁶

[7] The Claimant appealed to the General Division of the Tribunal. He wrote that he was appealing the decision dated "November 7, 2024".⁷

[8] The General Division found that the Claimant was appealing a different decision - the reconsideration decision dated May 28, 2024. It decided that his appeal couldn't proceed because it was more than 30 days late and he had failed to provide a reasonable explanation for the late appeal.⁸

[9] The Claimant applied to the Appeal Division arguing that the General Division made an error of jurisdiction.⁹

[10] I have found that the General Division made an error of jurisdiction because the Claimant wasn't appealing the reconsideration decision dated May 28, 2024, instead he was appealing the initial decision dated November 7, 2024.

Preliminary matters

The Claimant submitted new evidence

[11] New evidence is evidence that the General Division didn't have before it when it made its decision. The Appeal Division generally doesn't accept new evidence.¹⁰ This is because the Appeal Division isn't the fact finder or rehearing the case. It's a review of the General Division's decision based on the *same* evidence.¹¹

⁶ See page GD3-50 and section 111 of the *Employment Insurance Act* (EI Act).

⁷ See page GD7-1.

⁸ See General Division decision at pages AD1A-1 to AD1A-5.

⁹ See Application to the Appeal Division at pages AD1-1 to AD1-7.

¹⁰ See *Tracey v Canada (Attorney General)*, 2015 FC 1300, at paragraphs 29 and 34; *Parchment v Canada (Attorney General)*, 2017 FC 354, at paragraph 23.

¹¹ See *Gittens v Canada (Attorney General)*, 2019 FCA 256, at paragraph 13.

[12] There are some exceptions where new evidence is allowed.¹² For example, I can accept new evidence if it provides one of the following:

- general background information only
- if it highlights findings made without supporting evidence
- shows that the Tribunal acted unfairly.

[13] The Commission argues that the Claimant submitted new evidence that was not before the General Division.

[14] The Claimant agrees that he submitted new evidence, specifically the minutes of settlement after a mediation took place with his employer in July 2024. He also indicated in his appeal forms that he wasn't informed about the Tribunal until November [2024] and would have made his appeal on time if he had that information.¹³

[15] The parties agree and I accept that the minutes of settlement and the Claimant's position that he wasn't informed about the Tribunal until November [2024] is new evidence. I reviewed the General Division file and none of this evidence is in the record. This evidence wasn't before the General Division when it made its decision.

I am not accepting the Claimant's new evidence

[16] The Claimant argued that the new evidence should be accepted by the Appeal Division. He thinks it might fit under one of the exceptions, but he isn't sure.

[17] The Commission argued that the new evidence should not be accepted because it doesn't meet any of the exceptions in law.¹⁴

[18] I am not accepting the Claimant's new evidence outlined above. I've considered whether the Claimant's evidence met any of the three exceptions in law. The evidence isn't general background information; it doesn't highlight findings made without

¹² See *Sharma v Canada (Attorney General)*, 2018 FCA 48 and *Sibbald v Canada (Attorney General)*, 2022 FCA 157, at paragraphs 37–39.

¹³ See page AD1-5.

¹⁴ See page AD4-5.

supporting evidence and doesn't bring any procedural defects to the attention of the Tribunal.

[19] I acknowledge that the Claimant wants to provide additional information to support his appeal, but it is new evidence and doesn't meet any of the exceptions. An appeal to the Appeal Division isn't a "redo" based on updated evidence of the hearings before the General Division.¹⁵ Instead, they are reviews of the General Division based on the same evidence.

Issue

[20] Did the General Division make an error of jurisdiction when it decided that the Claimant was appealing the Commission's reconsideration decision dated May 28, 2024?

Analysis

[21] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it did not have the authority to decide. If the General Division made an error of jurisdiction, then I can intervene.¹⁶

The timeline of events

[22] The Commission made an initial decision, finding that the Claimant lost his job due to his own misconduct.¹⁷ The Claimant asked the Commission to reconsider that decision.¹⁸ Following his request, the Commission rendered a reconsideration decision on May 28, 2024, maintaining the decision that he lost his job due to his own misconduct.¹⁹

[23] Fast forward to July 2024, the Claimant and his employer settled their labour dispute.²⁰ Part of that settlement resulted in an amended Record of Employment (ROE)

¹⁵ See *Gittens v Canada (Attorney General)*, 2019 FCA 256, at paragraph 13.

¹⁶ See section 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).

¹⁷ See Commission's initial decision at pages GD3-32 to GD3-33.

¹⁸ See Claimant's request for reconsideration at pages GD3-34 to GD3-35.

¹⁹ See Commission's reconsideration decision at page GD3-44.

²⁰ See page GD3-49.

reflecting reason code, “K—Other Separation Payment.” Since his dispute with the employer was resolved, he went back to the Commission on August 29, 2024, and asked them to reconsider the misconduct decision again and explained that the ROE had now been changed.²¹

[24] The Commission wrote back to the Claimant on November 7, 2024, indicating that they could not proceed because a reconsideration decision had already been issued on May 28, 2024. The letter explained that he could still appeal the reconsideration decision dated May 28, 2024, to the Tribunal.

[25] In that same letter, the Commission also decided that he didn’t meet the criteria set out in section 111 of the *Employment Insurance Act* (EI Act).²² That section allows the Commission to rescind or amend a decision given in any particular claim for benefits if new facts are presented or if it is satisfied that the decision was given without knowledge of, or was based on a mistake as to, some material fact. Sometimes this is referred to as a “new facts application.”

[26] The Claimant then filed an appeal to the General Division, and it was received by the Tribunal on December 24, 2024.²³

[27] The General Division noticed that his appeal may have been filed late, so it wrote a letter identifying that the reconsideration decision he was appealing was dated May 28, 2024. It explained that if his appeal was filed late, then he had to provide a reasonable explanation for the delay in filing his appeal.²⁴

[28] The Claimant replied to the General Division’s letter clarifying that he wasn’t appealing the reconsideration decision from May 28, 2024, but that he was appealing the decision dated November 7, 2024. He also explained that he didn’t receive it on time due to the Canada Post strike around the same time.²⁵

²¹ See pages GD3-45 to GD3-46.

²² See page GD3-50.

²³ See appeal to the General Division at pages GD2-1 to GD2-8.

²⁴ See General Division letter to the Claimant at pages GD6-1 to GD6-3.

²⁵ See Claimant’s email reply at page GD7-1.

The parties agree that the General Division made an error of jurisdiction, but for different reasons

[29] The Claimant argues that the General Division made an error of jurisdiction in two ways. He explained that there were three ROEs submitted.²⁶ He doesn't know why the latest ROE (issued October 14, 2024) incorrectly identified the reason for separation as misconduct because that was an error.²⁷ He also says that the General Division erred because it didn't give him more time to file to his appeal.

[30] The Commission argues that the General Division made an error of jurisdiction, but for a different reason.²⁸ It submits that it erred when it decided that the Claimant was appealing the reconsideration decision dated May 28, 2024, because he wasn't appealing that decision.

[31] To support its position, the Commission says that the Claimant clearly stated in his email to the General Division that he was appealing the November 7, 2024, decision.²⁹ As well, it pointed out how his appeal forms to the General Division also suggest that he was appealing the November 7, 2024, decision because he wrote that "new facts" had been provided.

[32] The Claimant's arguments don't identify an error of jurisdiction. I agree with the Commission. The General Division made an error of jurisdiction when it decided he was appealing the May 28, 2024 reconsideration decision. The file record shows that wasn't the decision he was appealing.

The General Division's jurisdiction comes from a reconsideration decision that has been appealed to the Tribunal.

[33] Section 112(1) of the EI Act says that a person may make a request to the Commission for a reconsideration of that decision within 30 days after the date on which a decision is communicated to them or, any further time that the Commission may allow.

²⁶ See ROEs at pages GD3-22 to GD3-27.

²⁷ See pages GD3-26 to GD3-27 and AD5-1 to AD5-2.

²⁸ See page AD4-1 to AD4-5.

²⁹ See page GD7-1.

[34] Section 113 of the EI Act says that a person who is dissatisfied with a decision of the Commission made under section 112, including a decision in relation to further time to make a request, may appeal the decision to the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act*.

[35] This means that the General Division's jurisdiction to decide an issue comes from a reconsideration decision that has been appealed to the Tribunal.

The General Division made an error of jurisdiction when it decided that the Claimant was appealing the reconsideration decision dated May 28, 2024

[36] The General Division decided that the Claimant was appealing the reconsideration decision dated May 28, 2024. It found that it was communicated to him on August 4, 2024.³⁰

[37] It determined that the 30-day deadline to file his appeal to the General Division was September 3, 2024. It found that his appeal was filed on December 24, 2024.³¹ It concluded that his appeal was late and that he hadn't provided a reasonable explanation for the delay, so it would not give him more time to appeal.

[38] The file record shows that the Claimant wrote to the General Division stating that he was appealing the decision dated November 7, 2024.³²

[39] In its written decision, the General Division acknowledged that the Claimant was appealing the decision dated November 7, 2024, but indicated that there was no appeal route to the Tribunal.³³ In doing so, it erred when it decided that instead he was appealing the reconsideration decision dated May 28, 2024.

[40] I find that the General Division made an error of jurisdiction because it didn't deal with an issue it was supposed to deal with and it took jurisdiction over something that

³⁰ See paragraphs 15 and 16 of the General Division decision.

³¹ See paragraph 17 of the General Division decision.

³² See page GD7-1.

³³ See paragraphs 19–21 of the General Division decision.

was not appealed.³⁴ The Claimant wasn't appealing the reconsideration decision dated May 28, 2024, instead he was appealing the initial decision dated November 7, 2024.

[41] Since I have found that the General Division made an error of jurisdiction, it isn't necessary for me to consider any other alleged errors. I have already found one, which allows me to intervene.

Fixing the error

The Claimant and Commission agree that I should substitute with my own decision, but they disagree on the outcome

[42] There are two options for fixing an error by the General Division. The first option is to send the file back to the General Division for reconsideration. The second option is to give the decision that the General Division should have given by substituting with my own decision.³⁵

[43] I asked the parties what I should do to fix the error.

[44] The Claimant says that the process has been long, and he wants me to substitute with my own decision. He wants me to find that he was appealing the November 7, 2024, decision and that it wasn't late.

[45] The Commission agrees that I should substitute with my own decision. It says that I should dismiss the Claimant's appeal because they haven't yet rendered a reconsideration decision for the November 7, 2024—it is only an initial decision.

[46] I agree with the parties. I will fix the error by making the decision the General Division should have. The file is complete. In making this decision, I can make necessary findings of fact.³⁶

³⁴ See section 58(1)(a) of the DESD Act.

³⁵ See section 59(1) of the DESD Act.

³⁶ See section 64 of the DESD Act.

[47] The Claimant has been clear, he wasn't appealing the reconsideration decision dated May 28, 2024 (even though he could have appealed that one to the Tribunal).

[48] I find that the Claimant appealed the initial decision dated November 7, 2024, to the General Division. This is consistent with his email to the General Division confirming the same and his appeal forms to the General Division where he stated that there were "new facts."

[49] Unfortunately, the Claimant has appealed the November 7, 2024 initial decision to the General Division prematurely. I don't have jurisdiction to deal with that decision because the Commission hasn't made a reconsideration decision on the issue.

The Claimant has some other options depending on what he wants to do

[50] The Claimant still has some options. Let me explain.

[51] At the Appeal Division hearing, the Commission helpfully pointed out that if the Claimant wants to appeal the November 7, 2024, initial decision (this is s.111 of the EI Act), then he has to ask them to reconsider that decision first (this is s.112 of the EI Act). If the Claimant is not satisfied with the reconsideration decision rendered by the Commission, then he can appeal that to the Tribunal (this is s.113 of the EI Act).

[52] Put simply, the Claimant can call, go online, or visit a Service Canada centre and ask them to reconsider the initial decision dated November 7, 2024, about new facts. He will have to wait for the Commission to render a reconsideration decision before proceeding with an appeal to the General Division.

[53] The Claimant also remains free to appeal the May 28, 2024, reconsideration decision to the Tribunal. However, he will need to identify *when* the May 28, 2024, decision was communicated to him. If the appeal is late, he will also have to provide a reasonable explanation for the lateness.³⁷ If that's accepted by the General Division, then he can proceed to make arguments about the underlying issue (misconduct). The

³⁷ See section 27 of the *Social Security Tribunal Rules of Procedure*.

law is very strict, under no circumstances, can an appeal be brought more than one year after it has been communicated to a party.³⁸

Conclusion

[54] The Claimant's appeal is dismissed. The General Division made an error of jurisdiction when it decided the Claimant was appealing the reconsideration decision dated May 28, 2024.

[55] I am substituting with my own decision. The Claimant prematurely appealed the initial decision dated November 7, 2024, to the General Division. The Commission hasn't rendered a reconsideration decision on that issue. For that reason, I don't have jurisdiction to consider it at this time.

Solange Losier
Member, Appeal Division

³⁸ See section 52(2) of the DESD Act.