

Citation: *E. S. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 140

Appeal No: GE-14-659

BETWEEN:

E. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section
Late Appeal Over One Year

SOCIAL SECURITY TRIBUNAL MEMBER: Katherine Wallocha

DATE OF DECISION: December 5, 2014

DECISION

[1] The appeal to the General Division of the Social Security Tribunal was not brought in time.

INTRODUCTION

[2] The Appellant established a claim for Employment Insurance (EI) benefits on September 16, 2012. While the claimant was in receipt of EI benefits, he obtained and voluntarily left employment. The Respondent imposed an indefinite disqualification effective October 14, 2012 because the claimant voluntarily left his employment. The Respondent further denied the application at the reconsideration level on August 27, 2013. The Appellant appealed that decision to the Social Security Tribunal (Tribunal) on October 14, 2014, beyond the time limit set out in subsection 52(1) of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[3] The Tribunal must decide whether the appeal was brought in time.

THE LAW

[4] Under paragraph 52(1)(a) of the DESD Act, an appeal of a decision made under the *Employment Insurance Act* (EI Act) must be brought to the General Division in the prescribed form and manner and within 30 days after the day on which the decision is communicated to the Appellant.

[5] Under subsection 52(2) of the DESD Act, the General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the Respondent's reconsideration decision was communicated to the Appellant.

[6] Subsection 24(1) of the *Social Security Tribunal Regulations* (Tribunal Regulations) provides that an appeal must be in the form set out by the Tribunal on its website and contain

- (a) a copy of the decision that was made under subsection 81(2) or (3) of the *Canada Pension Plan*, subsection 27.1(2) of the *Old Age Security Act* or section 112 of the EI Act;
- (b) the date the decision was communicated to the appellant;
- (c) if a person is authorized to represent the appellant, the person's name, address, telephone number and, if any, facsimile number and email address;
- (d) the grounds for the appeal;
- (e) any documents or submissions that the appellant relies on in their appeal;
- (f) an identifying number of the type specified by the Tribunal on its website for the purpose of the appeal;
- (g) the appellant's full name, address, telephone number and, if any, facsimile number and email address; and
- (h) a declaration that the information provided is true to the best of the appellant's knowledge.

SUBMISSIONS/EVIDENCE

[7] The Respondent verbally informed the Appellant on August 27, 2013 that the initial decision would be maintained and the Appellant was still disqualified from receiving EI benefits because he voluntarily left his employment without just cause.

[8] The Respondent sent the Appellant written notification of this decision dated August 27, 2013.

[9] The Appellant submitted a Notice of Appeal to the General Division of the EI Section to Service Canada date stamped received on October 9, 2013. The Tribunal did not receive the

Notice of Appeal until February 6, 2014. The Appellant completed the employer's form and therefore he did not provide contact information for himself. He stated that he could not find a Service Canada office that was open.

[10] The Appellant contacted the Tribunal on May 7, 2014 and on May 8, 2014 a message was left informing him that he submitted the incorrect form to file his appeal. He was provided with the Tribunal's website address to find the correct form.

[11] The Appellant contacted the Tribunal again on May 9, 2014 and on May 12, 2014 he was informed that an email would be sent to him with a link to the proper Notice of Appeal. He was further informed that he needed to submit a copy of the reconsideration decision as it was not included in the documents originally submitted.

[12] The Tribunal sent an email to the Appellant on May 12, 2014 however the incorrect email address was used and a new email was sent on May 15, 2014.

[13] The Tribunal contacted the Appellant on May 15, 2014 and he was informed that the appeal cannot proceed without a copy of the reconsideration decision. He was further explained that only the Respondent can notify Canada Revenue Agency to cease collection action pending the outcome of the appeal however, the Respondent would only do so once a complete appeal has been filed with the Tribunal and this included the reconsideration decision.

[14] The Appellant submitted a Notice of Appeal dated August 30, 2014 and date stamped received by the Tribunal on September 5, 2014. He explained that he could not find a Service Canada office that was open and he was misinformed by Service Canada to mail to certain offices or manually submit it to the EI office. He was also given the wrong mailing address.

[15] The Tribunal sent the Appellant a letter dated September 16, 2014 informing him that his appeal was incomplete and an appeal is not properly filed until the Tribunal has received all of the required information. He was instructed to provide, in writing and without delay, a copy of the reconsideration decision being appealed and the date the reconsideration decision was communicated to him.

[16] The Appellant contacted the Tribunal on September 25, 2014 because he was confused about what was required of him. He was explained that they needed the reconsideration decision and if he did not have a copy that he could request one from Service Canada.

[17] A copy of the reconsideration decision was received by the Tribunal on October 14, 2014 however; the Appellant did not provide the date the reconsideration decision was communicated to him.

ANALYSIS

[18] The Tribunal finds that the Respondent's reconsideration decision was communicated to the Appellant on August 27, 2013. Following the Appellant's Request for Reconsideration, the Respondent contacted the Appellant to conduct further investigation. The Tribunal accepts the Respondent's evidence that at the conclusion of the telephone conversation, the Appellant was verbally informed that the decision to impose an indefinite disqualification would be maintained.

[19] While the Appellant made effort to submit a Notice of Appeal in October 2013, he submitted it to the wrong location and he completed the wrong form. After submitting the Notice of Appeal to the Tribunal in February 2014, the Appellant provided the contact information for the employer and therefore, the Tribunal was unable to contact the Appellant. The Appellant contacted the Tribunal on May 8, 2014 and when he was informed of his error, he was also informed of the importance of submitting a copy of the reconsideration decision.

[20] The Appellant was provided with a link to the correct form to fill out. The first page at this link provides instructions for submitting an appeal and it informs Appellants that the appeal will not be considered filed until all mandatory information has been provided. These instructions further inform the Appellant to include the date on which the decision was communicated and to provide a copy of the reconsideration decision that he was appealing.

[21] The Tribunal received another Notice of Appeal date stamped received on September 5, 2014 but it was not considered complete until October 14, 2014. The Appellant was instructed both verbally and in written format how to properly bring an appeal to the Tribunal and he failed to follow these instructions.

[22] Therefore, the Tribunal finds that the Appellant brought the appeal to the General Division of the Tribunal more than one year after the decision was communicated to the Appellant. The Tribunal must apply subsection 52(2) of the DESD Act which clearly states that in no case may an appeal be brought more than one year after the reconsideration decision was communicated to the Appellant.

CONCLUSION

[23] The appeal to the General Division of the Tribunal was not brought in time and therefore will not proceed.

K. Wallocha

Member, General Division