Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	D. M.
Representative:	Philip Be'er
Respondent:	Canada Employment Insurance Commission
Representative:	Josée Lachance

Decision under appeal:	General Division decision dated July 12, 2021 (GE-21-1144)

Tribunal member:	Pierre Lafontaine
Type of hearing:	Teleconference
Hearing date:	October 5, 2021
Hearing participants:	Appellant
	Representative of Appellant
	Representative of Respondent
Decision date:	October 7, 2021
File number:	AD-21-246

Decision

[1]   The appeal is allowed and the file returns to the General Division to decide whether the Claimant voluntarily left her employment without just cause.[1]

Overview

[2]   The Appellant (Claimant) established an initial claim effective January 12, 2020. Further to the employer's request for reconsideration, the Respondent, the Canada Employment Insurance Commission (Commission), changed its initial decision on May 15, 2020, and disqualified the Claimant for voluntary leaving her job without just cause. The Claimant appealed that decision to the General Division on June 28, 2021.

[3]   The General Division determined that the Claimant brought her appeal more than one year after communication of the reconsideration decision. It concluded that the Claimant's appeal was not filed on time and therefore could not proceed.[2]

[4]   The Appeal Division granted the Claimant leave to appeal. She submits that the Commission did inform her that her benefits would stop but she did not know that this would cause an overpayment. The Claimant puts forward that she was in great distress at that time and did not understand the impact of the reconsideration decision.

[5]   I must decide whether the General Division made an error when it concluded that the Claimant did not file her appeal on time and therefore could not proceed.

[6]   I am allowing the Claimant's appeal.

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[1] Pursuant to sections 29 and 30 of the *Employment Insurance Act*.
[2] The General Division applied section 52(2) of the *Department of Employment and Social Development Act* (DESD Act) which states that in no case may an appeal be brought more than one year after communication of the reconsideration decision.

Issue

[7]   Did the General Division make an error when it concluded that the Claimant did not file her appeal on time and therefore could not proceed?

Analysis

Appeal Division's mandate

[8]   The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.

[9]   The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[10]   Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, I must dismiss the appeal.

Did the General Division make an error when it concluded that the Claimant did not file her appeal on time and therefore could not proceed?

[11]   The General Division determined that on May 15, 2020, the Claimant received verbal communication of the Commission's reconsideration decision and that she brought her appeal at the General Division on June 28, 2021.

[12]   The General Division concluded that because the Claimant's appeal was filed more than one year after the Claimant received communication of the Commission's reconsideration decision, it was late, and therefore could not proceed.

[13]   I note that the Commission also sent to the Claimant its written reconsideration decision the same day, on May 15, 2020. However, it contains an error as to the address.[3] This corroborates the Claimant's position before the General Division that she never received the written reconsideration decision.

[14]   It is important to emphasize that the written reconsideration decision indicates: "**You have 30 days, following the receipt of this notice to file an appeal using the form provided by the Tribunal**".[4] It does not mention 30 days from the date of the verbal communication like the initial decision letter.[5]

[15]   Clearly, the Commission contemplated that, although it had verbally informed the Claimant on May 15, 2020, of its reconsideration decision, written communication was required in her particular case to start the 30-day appeal period.

[16]   In this context, I find that written communication of the reconsideration decision to the Claimant was required. Therefore, the General Division erred in finding that the Claimant had received communication of the reconsideration decision on May 15, 2020.

[17]   I am therefore justified to intervene.

Remedy

[18]   I will give the decision that the General Division should have given.[6]

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[3] The address on the reconsideration letter is different then the one on the Record of Employment. The application also contains an error since it repeats the address number in the apartment section.
[4] See GD3-35.
[5] See GD3-25.
[6] Pursuant to Section 59(1) of the DESD Act.

[19]   When reviewing the evidence in the file, it is safe to say that the Claimant did not receive communication of the written reconsideration decision before June 25, 2021. She brought her appeal to the General Division three days later on June 28, 2021.

[20]   I find that the Claimant brought her appeal to the General Division within 30 days after the day she received communication of the written reconsideration decision. Therefore, the Claimant brought her appeal on time.

[21]   For the above-mentioned reasons, I will allow the Claimant's appeal.

Conclusion

[22]   The appeal is allowed and the file returns to the General Division to decide whether the Claimant voluntarily left her employment without just cause.

Pierre Lafontaine
Member, Appeal Division