



Citation: *JL v Canada Employment Insurance Commission*, 2021 SST 697

## Social Security Tribunal of Canada Appeal Division

# Decision

**Applicant:** J. L.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Melanie Allen

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**Decision under appeal:** General Division decision dated July 8, 2021  
(GE-21-935)

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**Tribunal member:** Shirley Netten

**Decision date:** November 17, 2021  
**File number:** AD-21-256

## Decision

[1] Leave (permission) to appeal is granted and the appeal is allowed. The matter will return to the General Division for reconsideration by a different member.

## Background

[2] In March 2019, J. L. (the Claimant) asked Service Canada to reconsider unfavourable decisions it had made about his EI claim. On May 14, 2019, Service Canada told the Claimant that it would not be changing its decisions, and mailed the Claimant two letters to this effect.<sup>1</sup>

[3] The Claimant appealed to the General Division in May 2021. The General Division decided that it could not hear the appeal because it was brought more than a year after the reconsideration decision was communicated to the Claimant. The Claimant then asked the Appeal Division for permission to appeal that decision. He said that he had not received the May 14, 2019 letter(s) at the time, noting two relocations.

## Agreement on the outcome of the appeal

[4] At a settlement conference, the parties agreed that the General Division should have taken evidence on the question of when the Claimant received the written reconsideration decision, before deciding whether an extension of time was possible.

[5] The General Division made two inter-related errors:

- Despite holding a pre-hearing conference and despite some indications that the Claimant's address had changed, the General Division did not determine when the Claimant received the May 14, 2019 letters; and
- The General Division relied on the verbal communication of the reconsideration decision, without considering whether it was the verbal or written communication that marked the beginning of the appeal deadline.

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<sup>1</sup> Although there was only one initial decision (February 25, 2019), Service Canada then separated the issues so that one of the reconsideration decisions addressed the issue of misconduct and the other addressed the issues of a penalty and violation for misrepresentations.

[6] The *Social Security Tribunal Regulations* require that a copy of the reconsideration decision (and not simply one's knowledge of that decision) be provided to the Tribunal to initiate an appeal. The Appeal Division has accepted in other appeals that written communication of the reconsideration decision is required to start the 30-day clock.<sup>2</sup> And, the May 14, 2019 letters to the Claimant told him that he had “**30 days, following the receipt of this notice** to file an appeal using the form provided by the Tribunal.”<sup>3</sup> In these circumstances, the General Division erred by basing its decision solely on the date of verbal communication.

[7] Since I cannot hear new evidence, the matter will return to the General Division for reconsideration. The General Division must re-decide whether the Claimant's appeal was late and, if it was late, whether to grant an extension of time. The General Division must give the Claimant the opportunity to provide evidence relevant to these decisions, including when he received the two May 14, 2019 letters.

## Conclusion

[8] Permission to appeal is granted and the appeal is allowed. The matter returns to the General Division for reconsideration by a different member, in accordance with the directions above.

Shirley Netten  
Member, Appeal Division

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<sup>2</sup> See, for example, *DM v Canada Employment Insurance Commission*, 2021 SST 565.

<sup>3</sup> These letters are found at GD3A-68 and GD3B-88. The emphasis is in the original letters.