



Citation: *HM v Canada Employment Insurance Commission*, 2022 SST 1163

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

<b>Applicant:</b>	H. M.
<b>Representative:</b>	S. M.
<b>Respondent:</b>	Canada Employment Insurance Commission
<b>Representative:</b>	Rachel Paquette

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<b>Decision under appeal:</b>	General Division decision dated October 11, 2022 (GE-22-2344)
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<b>Tribunal member:</b>	Shirley Netten
<b>Decision date:</b>	November 4, 2022
<b>File number:</b>	AD-22-765

## 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.

## Overview

[2] The Claimant, H. M., had an open claim for employment insurance (EI) regular benefits when she stopped working in May 2021. She did not claim benefits at that time. In November 2021, the Claimant asked to backdate benefits under the renewal claim, to May 9, 2021. Service Canada refused.<sup>1</sup>

[3] On appeal, the General Division decided whether a new claim, from October 2021 (for sickness benefits) could be backdated under section 10(4) of the *Employment Insurance Act*. The General Division dismissed the appeal, finding that the Claimant had good cause for delaying her application only after she had been in contact with Service Canada.

[4] The Claimant has asked for permission to appeal to the Appeal Division.

## The parties agree on the outcome of the appeal

[5] The Canada Employment Insurance Commission's representative conceded that the General Division made an error of law, by deciding the question of a late initial claim when this was a renewal claim. The representative also pointed out that the General Division wasn't aware of the dates requested, and did not have evidence of when the Claimant contacted Service Canada.

[6] The parties agree that the matter should return to the General Division to be decided by a different member.

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<sup>1</sup> Service Canada acts on behalf of the Canada Employment Insurance Commission.

## **I accept the proposed outcome**

[7] I agree that the General Division made an error of law, by making a decision about a new application and not the renewal claim. The matter will be returned to the General Division to decide whether the Claimant's late claim for EI regular benefits between May 9 and August 9, 2021, or any portion thereof, can be accepted.

[8] As soon as the General Division has given the parties the new file number, they may (if they wish) submit additional written information to the General Division. The Claimant and her spouse will be able to testify at the hearing.

## **Conclusion**

[9] Permission to appeal is granted and the appeal is allowed. The matter will return to the General Division for reconsideration by a different member, as directed above.

Shirley Netten  
Member, Appeal Division