



Citation: *JR v Canada Employment Insurance Commission*, 2023 SST 708

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: J. R.

Respondent: Canada Employment Insurance Commission
Representative: A. Fricker

Decision under appeal: General Division decision dated April 3, 2023
(GE-23-452)

Tribunal member: Jude Samson

Decision date: June 5, 2023
File number: AD-23-399

Decision

[1] J. R. is the Claimant in this case. I'm giving her permission to appeal, allowing her appeal, and giving her more time to appeal to the General Division. I'm also sending the file back to the General Division for a new member to consider the remaining issues in her case.

Overview

[2] The Canada Employment Insurance Commission (Commission) refused to pay Employment Insurance (EI) regular benefits to the Claimant. It said she hadn't shown that she was available for work.¹

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division, but it concluded that her appeal was late. And it refused to give the Claimant more time to appeal.

[4] The Commission's decision is dated November 10, 2022. The Claimant's appeal was due within 30 days of when she received the decision.

[5] When the Commission mailed its decision to the Claimant, she was away from home, dealing with her father's unfortunate and unexpected death. The General Division concluded that the Claimant received the Commission's decision on December 15, 2022, the day she returned home.² This means the Claimant's appeal to the General Division was due on January 16, 2023, but the Tribunal only received it on February 10, 2023.

[6] The General Division had the power to give the Claimant more time to appeal if she had a reasonable explanation for the delay.³ Instead, the General Division found that the Claimant "provided no information or detail about the almost two months that

¹ Sections 18 and 50 of the *Employment Insurance Act* set out the availability requirements.

² The Claimant says that she didn't get the Commission's decision until later still, but I find that she meets the requirements for an extension of time, regardless of the precise dates.

³ See section 27 of the *Social Security Tribunal Rules of Procedure*.

passed between her returning home and her filing her Notice of Appeal on February 10, 2023.”⁴ So, the General Division refused to give the Claimant more time to appeal.

[7] I reviewed the file and invited the parties to a settlement conference.

The parties agree on the outcome of the appeal

[8] At a settlement conference on June 5, 2023, the parties agreed to the following:

- The General Division based its decision on an important mistake about the facts of the case when it concluded that the Claimant provided no information or detail about why she delayed filing her appeal between December 15, 2022, and February 10, 2023;
- I should give the Claimant permission to appeal, allow her appeal, and give the decision the General Division should have given;
- Specifically, the Claimant had a reasonable explanation for her delay in appealing to the General Division and it should have given her more time to appeal; and
- I should return the file to the General Division to consider the remaining issues in the appeal.

I accept the proposed outcome

[9] Based on the information available to me, I agree with the outcome proposed by the parties.

[10] In the Notice of Appeal that the Claimant filed with the General Division, she explained that, after returning home in December 2022, she had been working almost

⁴ See paragraph 9 of the General Division decision on page AD1A-3.

every day of the week. Plus, someone “from EI” told the Claimant that she could still appeal to the Tribunal, even if she was late.⁵

[11] However, the General Division didn’t mention any of this evidence in its decision. As a result, it based its decision on an important mistake about the facts of the case when it found that the Claimant provided no information or detail about the delay from December 2022 to February 2023.⁶

[12] In the circumstances, I’m giving the Claimant permission to appeal, allowing her appeal, and giving the decision the General Division should have given. Specifically, the Claimant had a reasonable explanation for the delay appealing to the General Division. So, the General Division should have given the Claimant more time to appeal and allowed her case to move forward.

[13] This decision does not resolve the main issue in the Claimant’s appeal: does she meet the availability requirement for getting EI regular benefits? I will return the file to the General Division for a new member to consider that issue.

Conclusion

[14] The General Division based its decision on an important mistake about the facts of the case. As a result, I gave the Claimant permission to appeal, allowed her appeal, and gave her more time to appeal to the General Division. I’m also sending the file back to the General Division for a new member to decide the remaining issues in the appeal.

Jude Samson
Member, Appeal Division

⁵ See the Claimant’s explanation on page GD2-16 of the appeal record.

⁶ Section 58(1)(c) of the *Department of Employment and Social Development Act* allows me to intervene when the General Division makes this type of mistake.