



[TRANSLATION]

Citation: *BM v Canada Employment Insurance Commission*, 2023 SST 1343

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: B. M.

Respondent: Canada Employment Insurance Commission
Representative: Julie Meilleur

Decision under appeal: General Division decision dated
May 2, 2023 (GE-23-862)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference
Hearing date: October 5, 2023
Hearing participant: Appellant
Decision date: October 6, 2023
File number: AD-23-539

Decision

[1] The appeal is allowed. The file should be returned to the General Division so that a different member may make a decision on the late reconsideration request.

Overview

[2] The Appellant (Claimant) applied for Employment Insurance (EI) regular benefits on June 23, 2020. On July 21, 2020, the Respondent (Commission) made a negative decision. The Claimant was not entitled to EI special or regular benefits, since he had 0 hours of insurable employment between June 16, 2019, and June 27, 2020. He needed 420 hours of insurable employment to qualify.

[3] The Commission received a reconsideration request from the Claimant on September 28, 2022. On February 3, 2023, the Commission refused to reconsider its decision, since the reasons the Claimant had given to justify the delay of more than two years in filing the reconsideration request did not meet the requirements of the *Reconsideration Request Regulations*.

[4] On March 20, 2023, the Claimant appealed the Commission's refusal to reconsider its initial decision to the General Division.

[5] The General Division found that the Claimant's appeal was late and that he had not given a reasonable explanation for the delay in filing his appeal with the General Division. It refused to give more time to appeal.

[6] The Claimant was given permission to appeal. He says that the General Division made an important error of fact. He argues that it made an error in finding that he did not have a reasonable explanation for the delay in filing his appeal.

[7] I have to decide whether the General Division made an error in finding that the Claimant's appeal was late.

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

Issue

[9] Did the General Division make an error in finding that the Claimant's appeal was late?

Analysis

Appeal Division's mandate

[10] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

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

[12] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or 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, the Tribunal must dismiss the appeal.

Did the General Division make an error in finding that the Claimant's appeal was late?

[13] The General Division found that the Claimant's appeal was late and that he had not given a reasonable explanation for the delay in filing his appeal with the General Division. It refused to give more time to appeal.

[14] The Claimant says that he gave a reasonable explanation for the delay in filing his appeal with the General Division. He could not file his appeal until he had read the Commission's refusal letter after returning to Canada. He argues that he provided the

¹ See *Canada (Attorney General) v Jean*, 2015 FCA 242; and *Maunder v Canada (Attorney General)*, 2015 FCA 274.

General Division with the boarding documentation which shows that he was out of the country until March 8, 2023.

[15] The Commission is of the view that the Claimant filed his notice of appeal with the General Division on time. According to the facts, the decision at issue was communicated to him on March 8, 2023, and his notice of appeal is dated March 20, 2023. The notice of decision told the Claimant that he had 30 days following its receipt to appeal to the Tribunal.

[16] I note that the Commission's letter refusing to reconsider its initial decision is dated February 3, 2023.² The evidence on file shows that the Commission's refusal decision was communicated to the Claimant on March 8, 2023.³ He filed his appeal on March 20, 2023.⁴

[17] The Claimant's appeal was filed within 30 days after the day the Commission's decision was communicated to him.⁵ His appeal is not late.

[18] This means that I am justified in intervening.

Remedy

[19] Given that the appeal is not late and that the Claimant did not have an opportunity to present his case, the file should be returned to the General Division so that a decision may be made on the late reconsideration request.

Conclusion

[20] The appeal is allowed. The file should be returned to the General Division so that a different member may make a decision on the late reconsideration request.

Pierre Lafontaine
Member, Appeal Division

² See GD3-22.

³ See GD6-4.

⁴ See GD2.

⁵ See section 52(1) of the *Department of Employment and Social Development Act*.