



Citation: *NS v Canada Employment Insurance Commission*, 2023 SST 1686

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

# **Decision**

**Appellant:** N. S.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Daniel McRoberts

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**Decision under appeal:** General Division decision dated April 13, 2022  
(GE-22-725)

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**Tribunal member:** Melanie Petrunia

**Decision date:** November 7, 2023

**File number:** AD-23-538

## **Decision**

[1] The appeal is allowed. The matter will go back to the General Division for reconsideration.

## **Background**

[2] The Appellant, N. S. (Claimant), applied for employment insurance (EI) regular benefits. In his application for benefits, the Claimant said that he was taking a course of his own initiative.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant was not entitled to benefits starting April 21, 2021, because he did not prove his availability for work while attending school.

[4] The Commission's reconsideration decision was dated November 18, 2021. The Claimant appealed to the Tribunal's General Division on February 28, 2022. The General Division decided that the Claimant's appeal was late and refused an extension of time to appeal.

[5] The Claimant argues that he did not receive any communication, including the General Division decision, until he contacted the Tribunal to ask about the status of his appeal. The Commission agrees that the Claimant was not given an opportunity to provide relevant information.

## **The parties agree on the outcome of the appeal**

[6] The parties agree that the appropriate remedy is to send the matter back to the General Division to decide whether an extension of time should be granted.

## **I accept the proposed outcome**

[7] In its decision, the General Division considered the four factors under the former test for an extension of time to appeal. These factors can be summarized as follows:

- a) The Claimant had a continuing intention to pursue the application;

- b) There is a reasonable explanation for the delay;
- c) There is no prejudice to the other party if the extension is granted; and
- d) There is an arguable case on appeal.<sup>1</sup>

[8] The General Division found that there was no prejudice to the Commission if the extension is granted.<sup>2</sup> It also found that the Claimant had an arguable case with respect to the issue of his availability while attending a course of instruction.<sup>3</sup> These factors would support granting the extension.

[9] The General Division found that the Claimant did not have a continuing intention to appeal or a reasonable explanation for the delay in appealing. Because of this, it refused the extension of time.

[10] For both of these factors, the General Division relied on the fact that the Tribunal wrote to the Claimant on March 22, 2022, asking for more information about the delay in appealing.<sup>4</sup> No response was received, and the General Division noted “there is no indication that the email was not delivered.”<sup>5</sup>

[11] The Claimant provided his email address and consent to communicate by email with his Notice of Appeal. The email address he provided ends in “@hotmail.ca”. The communication from the Tribunal on March 22, 2022, was sent to an email address ending in “@hotmail.com.”

[12] The General Division, though unknowingly, failed to provide a fair process when it relied on the fact that the Claimant did not respond to the request for more information as a reason to refuse the extension of time to appeal. The Claimant did not have an

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<sup>1</sup> The Federal Court set out this test in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 833.

<sup>2</sup> General Division decision at para 15.

<sup>3</sup> General Division decision at para 11.

<sup>4</sup> General Division decision at paras 5 to 7 and 12 to 14.

<sup>5</sup> General Division decision at para 12.

opportunity to respond to the request because the communication was sent to the wrong email address.

[13] The Claimant also had filed a renewal application for benefits on January 4, 2022. As a result of this application, the Commission terminated the disentitlement as of December 22, 2021. The General Division erred by not considering this information when deciding whether the Claimant had a continuing intention to appeal and a reasonable explanation for the delay.

[14] The Claimant did not receive the communication from the Tribunal asking for more information about his late appeal. This means that the Claimant has not had an opportunity to present his evidence on this issue to the General Division. Sending the matter back to the General Division is the appropriate remedy.

## **Conclusion**

[15] The appeal is allowed.

[16] The General Division failed to provide a fair process and overlooked relevant evidence in its decision. I am returning the matter to the General Division for reconsideration.

Melanie Petrunia  
Member, Appeal Division