



Citation: *BK v Canada Employment Insurance Commission*, 2023 SST 1843

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: B. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision 468344 dated April 13,
2022 (issued by Service Canada)

Tribunal member: Leanne Bourassa
Hearing date: N/A
Decision date: September 20, 2023
File number: GE-23-1763

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for employment insurance benefits. Further to a request for reconsideration, on April 13, 2022, the Respondent issued a decision under section 112 of the *Employment Insurance Act* (Act). The Appellant appealed that decision to the Social Security Tribunal (Tribunal) on June 26, 2023.

[2] Under subsection 52(2) of the *Department of Employment and Social Development Act* (DESD Act), in no case may an appeal be brought to the General Division of the Tribunal more than one year after the day on which the Respondent's reconsideration decision was communicated to the Appellant.

[3] The Tribunal must decide whether the appeal was brought in time.

ANALYSIS

[4] The Tribunal finds that the Respondent's reconsideration decision was communicated verbally to the Appellant on April 8, 2022. The Respondent provided notes of a phone call with the Appellant on that day, explaining that he had been asked to provide evidence that he had been available for work. When informed that demonstrating his availability would not immediately entitle him to benefits as there was still an outstanding issue of a disqualification for losing his job because of misconduct, the Appellant is noted to have said he did not want to go through the effort of arguing and proving his availability just to be told he still couldn't be paid because he was fired from his job.

[5] The Respondent's notes also show that at the conclusion of the April 8, 2022 call, the Appellant was advised that without providing evidence to show that he was actively searching for work, the decision to deny his availability would be maintained. The Appellant is noted to have understood the ramifications of his decision and stated that it did not change his position.

[6] In light of this evidence, the Tribunal wrote to the Appellant on August 23, 2023 to inquire if he recalled this conversation of April 8, 2022 and to allow him to provide further information. The Appellant was given until September 7, 2023, to respond. No response has been received from the Appellant as of the date of this decision.

[7] Following the phone call on April 8, 2022, a letter was sent to the Appellant dated April 13, 2022. The Tribunal notes that the address to which this letter was sent is the same address that the Appellant indicated as his on his Notice of Appeal. There is no evidence that this letter was returned to the Respondent as undelivered.

[8] The Tribunal notes that this letter indicates in bold text that the Appellant had a right to appeal an unfavorable decision to the Tribunal within 30 days.

[9] The Tribunal finds that the Appellant brought the appeal to the General Division of the Tribunal on June 26, 2023. This is the date that the Notice of Appeal is stamped as "received" by the Tribunal.

[10] The Tribunal finds that more than one year passed between when the reconsideration decision was communicated to the Appellant and when the appeal was filed.

[11] The Tribunal does note that the Appellant argues that it was not clear to him that there were two reasons for his inability to receive benefits – a disqualification because of losing his job because of misconduct and a disentitlement for failing to prove he was available for work. The disqualification for losing his job because of misconduct was resolved by a previous appeal to the Tribunal. However, the disentitlement because of failure to prove availability still prevented benefits from being paid. This was communicated to the Appellant in the April 13, 2022 letter.

[12] On July 3, 2023, the Appellant wrote to the Tribunal and explained delays that he faced in getting information from the Respondent in March 2022. He alleges they did not act in good faith from the start and suggests that exceptions to late filings need to be made for extenuating circumstances and he believes his case warrants it.

[13] While the Appellant's confusion and frustration may be understandable, from the evidence before the Tribunal, he was verbally advised on April 8, 2022 and by letter dated April 13, 2022 that the disqualification for failing to demonstrate availability for work was maintained. The Appellant did not refute this information by providing an answer to the letter sent to him on August 28, 2023.

[14] The Tribunal must apply subsection 52(2) of the DESD Act which clearly states that in no case may an appeal be brought more than one year after the reconsideration decision was communicated to the Appellant. The Tribunal has no authority or discretion to act in any way other than what is set out in this article of the law.

CONCLUSION

[15] The appeal to the General Division of the Tribunal was not brought in time and therefore will not proceed.

Leanne Bourassa
Member, General Division - Employment Insurance Section