



[TRANSLATION]

Citation: *KE v Canada Employment Insurance Commission*, 2024 SST 407

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	K. E.
Representative:	J. N.
Respondent:	Canada Employment Insurance Commission
Representative:	Melanie Allen

Decision under appeal:	General Division decision dated November 23, 2023 (GE-23-2357)
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Tribunal member:	Pierre Lafontaine
Type of hearing:	In writing
Decision date:	April 19, 2024
File number:	AD-23-1073

Decision

[1] The appeal is allowed. The file returns to the General Division for reconsideration.

Overview

[2] The Appellant (Claimant) applied for Employment Insurance (EI) benefits on December 8, 2022. She submitted her reports after the January 29, 2023, deadline. She wanted them to be treated as though they were made earlier, on December 4, 2022. The Respondent (Commission) refused the Claimant's request.

[3] The Commission also decided that the Claimant was disentitled from receiving EI regular benefits from December 5, 2022, because she wasn't available for work within the meaning of the law. The Claimant appealed to the Tribunal's General Division.

[4] The General Division found that the Claimant did not act as a reasonable and prudent person would have acted in similar circumstances, since she waited to contact the Commission. The General Division found that the Claimant had not shown that she had good cause for the delay throughout the entire period of the delay. So, there was no reason to grant an antedate

[5] The General Division also found that the Claimant was disentitled from receiving EI regular benefits from December 5, 2022, because she was not available for work, being limited to one employer under her work permit.

[6] In support of her application for permission to appeal, the Claimant provided a Record of Employment (ROE) indicating that she actually stopped working on December 22, 2022. She wonders why the Commission did not inform the General Division of the ROE.

Issues

[7] Did the General Division make an error by refusing the Claimant's antedate request?

[8] Did the General Division make an error in its interpretation of the notion of availability?

Analysis

[9] In support of her application, the Claimant provided a ROE indicating that she stopped working on December 22, 2022. She wonders why the Commission did not inform the General Division of the ROE.

[10] It is well established that I cannot consider new evidence at the Appeal Division. The Appeal Division's role is limited by the law.¹

[11] I note that the Claimant told the Commission that she did not submit her reports because she was told by a Service Canada agent that she could not submit reports because she had a closed work permit.²

[12] The Commission is of the view that the General Division did not emphasize this evidence in the decision and that it cannot be confirmed or denied that it considered this information when it weighed the evidence. So, the General Division made an error on this point and its decision is incomplete.

[13] From my reading of the General Division decision, I note that the General Division did not consider this evidence in its decision. But this is important evidence to determine whether the Claimant had good cause for the delay. This is an error of law.

[14] On the issue of availability, the Commission is of the view that there could be an error of law because the relevant case law might have been ignored.

¹ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

² See GD3-27.

[15] I note that the General Division made a decision on availability considering that the Claimant was laid off as of December 2, 2022, which does not seem to be the case based on the new ROE.³ Furthermore, the General Division did not consider in its analysis the recent case law of the Federal Court of Appeal, which tells us that, in certain circumstances, claimants should be given a reasonable period before the job search begins to see whether they will be recalled to work.⁴

[16] Given the General Division's errors, I am justified in intervening.

Remedy

[17] It is clear that the record before the General Division is incomplete. It does not contain the new ROE the Claimant provided. So, I am unable to give the decision that the General Division should have given.

[18] I have no choice but to return the file to the General Division for reconsideration. I suggest that the Claimant choose an oral hearing instead of one in writing to make it easier to present her case.

Conclusion

[19] The appeal is allowed. The file returns to the General Division for reconsideration.

Pierre Lafontaine
Member, Appeal Division

³ However, I note that the Claimant applied for Employment Insurance on December 8, 2022.

⁴ See *Page v Canada (Attorney General)*, 2023 FCA 169.