



Citation: *AD v Canada Employment Insurance Commission*, 2024 SST 251

## **Social Security Tribunal of Canada**

### **Appeal Division**

# **Decision**

<b>Appellant:</b>	A. D.
<b>Representative:</b>	C. A.
<b>Respondent:</b>	Canada Employment Insurance Commission
<b>Representative:</b>	Kevin Goodwin

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<b>Decision under appeal:</b>	General Division decision dated August 10, 2023 (GE-23-1672)
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<b>Tribunal member:</b>	Melanie Petrunia
<b>Type of hearing:</b>	In person
<b>Hearing date:</b>	December 20, 2023
<b>Hearing participants:</b>	Appellant's representative Respondent's representative
<b>Decision date:</b>	March 12, 2024
<b>File number:</b>	AD-23-786

## Decision

[1] The appeal is dismissed. The General Division did not make any reviewable errors.

## Overview

[2] The Applicant, A. D. (Claimant), stopped working on October 31, 2021. He submitted a renewal application for employment insurance (EI) regular benefits on November 25, 2021, but didn't submit his report for the period starting October 31, 2021, until January 13, 2022.

[3] The Claimant asked the Respondent, the Canada Employment Insurance Commission (Commission), to treat his claim as though it was made it on an earlier date. The Commission decided that the Claimant hadn't shown good cause for the delay, so it refused to backdate his claim.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant failed to show good cause for the delay in submitting his claim.

[5] The Claimant is now appealing the General Division decision. He argues that The General Division based its decision on important factual errors. Specifically, he says that the General Division did not take all of his circumstances into consideration and erred when it found that he should have known that he had to complete bi-weekly reports.

[6] I am dismissing the appeal. The General Division did not make any reviewable errors.

## Issues

[7] The issues in this appeal are:

- a) Did the General Division fail to consider all of the Claimant's circumstances?

b) Did the General Division base its decision on important factual errors?

## Analysis

[8] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:<sup>1</sup>

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

### – Background

[9] A claimant must submit a claim report for each week, in order to receive payment for regular benefits.<sup>2</sup> The claims are made by submitting a report to the Commission every two weeks, and they have to be made within three weeks of the date of unemployment.<sup>3</sup>

[10] If a claim is filed late, it can be treated as though it was made earlier. However, the law says that, for this to happen, the claimant requesting the backdate needs to show good cause for the entire period of the delay.<sup>4</sup>

[11] The Claimant worked from August 28, 2021, to October 31, 2021. He had a previously made an initial claim for benefits and had a benefit period established effective May 30, 2021.<sup>5</sup> When he stopped working, he submitted a renewal application

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<sup>1</sup> The relevant errors, formally known as “grounds of appeal,” are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>2</sup> See section 49 of the *Employment Insurance Act* (Act).

<sup>3</sup> See section 26 of the *Employment Insurance Regulations* (Regulations).

<sup>4</sup> See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the Act.

<sup>5</sup> General Division decision at para 15.

for benefits on November 25, 2021, but he did not complete any claim reports at that time.

[12] The Claimant returned to work from December 15, 2021, to January 13, 2022. During this time, he was at sea with no access to internet or cellular service. When he was in port, he saw an email from the Commission and learned that there was an issue with his claim.<sup>6</sup> The Claimant tried to file a report at that time but didn't have an access code. He thought he tried to submit the report using his online banking partner and didn't realize the attempt hadn't worked.<sup>7</sup>

[13] By February 2022, the Claimant was receiving benefits. When he was preparing his taxes in May 2022, the Claimant realized that he had not received benefits for the period from October 31 to December 14, 2021.<sup>8</sup>

[14] The General Division considered whether the Claimant had good cause for the delay in filing his report for the period starting October 31, 2021. It considered his circumstances and the facts that he testified to. The General Division found that a reasonable and prudent person in the Claimant's situation would have contacted the Commission to find out why he wasn't receiving benefits, verify his rights and obligations and find out about the access code he needed to submit his report.<sup>9</sup>

### **The General Division considered all of the Claimant's circumstances**

[15] The Claimant argues that the General Division did not take into account all relevant facts when considering the reasonableness of the delay in filing his report. Specifically, he says that the General Division did not consider that his province had just gone into a second full lockdown due to the COVID-19 pandemic.<sup>10</sup>

[16] The Claimant also argues that the General Division failed to consider that it was very difficult at the time to contact Service Canada and the information provided was

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<sup>6</sup> General Division decision at para 20.

<sup>7</sup> General Division decision at para 20.

<sup>8</sup> General Division decision at para 20.

<sup>9</sup> General Division decision at para 26.

<sup>10</sup> AD1-4

often lacking or incomplete. He explains that he and his representative tried many times to contact Service Canada.<sup>11</sup>

[17] The Claimant's representative stressed that it is important for the Claimant to have in-person service and he is not computer savvy. He was brought up to not rely on social benefits. She says that the Claimant tried to call Service Canada and did not have the option of going into an office. The General Division should have taken this into consideration.

[18] The Claimant says that he only had six weeks to address his EI claims with several challenges at the time, including limited access to the internet and poor cell service, moving to a new home and worrying about COVID-19.<sup>12</sup>

[19] I have reviewed the circumstances that the General Division took into consideration. The General Division acknowledged that the Claimant returned from working at sea on October 31<sup>st</sup> and moved to a new apartment on November 19, 2021. He did not have internet at this apartment until December 14<sup>th</sup> and had to go to his mother's house or the library to access the internet. The Claimant submitted his renewal application online from his mother's house on November 25, 2021.<sup>13</sup>

[20] The Claimant testified that he tried to contact Service Canada two or three times and waited on hold for over an hour. The Claimant said that he did not receive an access code and believed he contacted the Commission about this. He explained that he was confused with the process and wasn't getting much help from Service Canada over the phone.<sup>14</sup>

[21] I have listened to the recording of the hearing before the General Division. The Claimant stated that the Service Canada offices were closed due to Covid.<sup>15</sup> The

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<sup>11</sup> AD1-8

<sup>12</sup> AD1-9

<sup>13</sup> General Division decision at para 20.

<sup>14</sup> General Division decision at para 20.

<sup>15</sup> Recording of General Division hearing at 20:30.

Claimant did not make further arguments or submissions concerning the impact of the pandemic on the delay in filing his reports.

[22] The General Division recognized the Claimant's statement that the Service Canada offices were closed.<sup>16</sup> This fact was taken into consideration by the General Division when it looked at the Claimant's circumstances.

[23] The General Division found that a reasonable person in the Claimant's circumstances would have made more effort to obtain an access code and file his reports to ensure he was receiving benefits.<sup>17</sup> It considered that the Claimant acknowledged that he read the application for benefits which says that a failure to complete bi-weekly reports can result in a loss of entitlement and payment.<sup>18</sup>

[24] The General Division also took into consideration that the Claimant had completed reports before and should have known that he would have to submit reports again when he filed his renewal claim.<sup>19</sup>

[25] The General Division acknowledged that this was a busy time for the Claimant. However, it found that the Claimant was able to apply to renew his claim and could have also followed up with the Commission to find out what he needed to do to receive benefits and obtain an access code.<sup>20</sup>

[26] The General Division recognized that the Claimant had good cause after he returned to sea on December 15, 2021. However, treating his application as though it was made on that day would still not allow him to receive benefits for the reporting periods starting October 31, 2021.<sup>21</sup>

[27] I recognize that the Claimant disagrees with the findings of the General Division. I have not found that it overlooked any evidence or failed to take into consideration any

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<sup>16</sup> General Division decision at para 20 at the 4<sup>th</sup> bullet point.

<sup>17</sup> General Division decision at para 26.

<sup>18</sup> General Division decision at para 27.

<sup>19</sup> General Division decision at para 27.

<sup>20</sup> General Division decision at para 28.

<sup>21</sup> General Division decision at paras 23 and 24.

relevant facts. I cannot intervene in order to re-weigh the evidence to come to a different conclusion.

[28] The Claimant says that he did the best he could and believes that he acted as a reasonable person. However, it is not my role to review the General Division's application of the facts to the law. I have found that it took into consideration the relevant facts and explained the reasons for its decision.

### **The General Division didn't base its decision on factual errors**

[29] The Claimant says that the General Division erred by seeming to conclude that he had experience submitting renewal claims. He argues that the General Division found that, because he had opened a claim in June 2021, he should know all aspects of EI reporting. The Claimant says that it is an error to find that he was familiar with renewing a claim because he had only applied for benefits once before and had never filed a renewal application.<sup>22</sup>

[30] In the paragraph that the Claimant relies on, the General Division summarized the arguments that the Commission was making.<sup>23</sup> It did not make the finding suggested by the Claimant. The General Division did find that it was reasonable that the Claimant would know, or should have known, that he would have to complete reports with his renewal claim because it said so on the application, and because he had submitted reports previously.<sup>24</sup>

[31] The General Division explained why it concluded that the Claimant should have known that he would have to complete reports after submitting his renewal claim. I find that the General Division did not base its decision on any factual errors when it made this finding.

[32] I find that the General Division considered the relevant evidence. It applied the proper legal test and made findings based on the evidence before it. The General

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<sup>22</sup> AD1-8

<sup>23</sup> General Division decision at para 22.

<sup>24</sup> General Division decision at para 27.

Division did not base its decision on factual errors made perversely, capriciously, or without regard for the material before it.

## **Conclusion**

[33] The appeal is dismissed. The General Division did not make an error that falls within the permitted grounds of appeal.

Melanie Petrunia  
Member, Appeal Division