



Citation: *MP v Canada Employment Insurance Commission*, 2024 SST 85

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. P.

Respondent: Canada Employment Insurance Commission
Representative: Melanie Allen

Decision under appeal: General Division decision dated June 26, 2023
(GE-23-247)

Tribunal member: Glenn Betteridge

Type of hearing: Videoconference
Hearing date: December 12, 2023
Hearing participants: Appellant
Respondent's representative

Decision date: January 24, 2024
File number: AD-23-657

Decision

[1] I am dismissing M. P.'s appeal. He hasn't shown the General Division made an error.

[2] So the General Division decision stands.

Overview

[3] I will call M. P. the Claimant because he renewed a claim for Employment Insurance (EI) benefits after he was let go from his job.

[4] The Canada Employment Insurance Commission (Commission) denied his claim for benefits. It decided he lost his job for misconduct under the *Employment Insurance Act* (EI Act).¹ I will call this the misconduct issue.

[5] On January 28, 2022, the Commission verbally notified the Claimant it was denying his claim.

[6] On December 29, 2022, the Claimant sent the Commission a reconsideration request. The Commission refused to extend the 30-day deadline for him to file his reconsideration. The Claimant appealed that decision to this Tribunal's General Division. The General Division found the Commission didn't act judicially when it refused to extend the 30-day deadline. So the General Division had to decide whether the Claimant met the legal test to extend the deadline. It decided he didn't and dismissed his appeal.

[7] The Claimant is now appealing the General Division's decision to the Appeal Division. He argues the General Division didn't follow a fair procedure, made an error of jurisdiction, made an error of law, and made serious factual errors.

¹ Section 30 of the *Employment Insurance Act* (EI Act) says a person who loses their job because of misconduct is disqualified from getting benefits. In other words, they can't get EI regular benefits.

Issues

[8] This appeal raises four issues:

- Did the General Division use an unfair process when it refused to hear the Claimant's evidence and arguments about the misconduct issue?
- Did the General Division fail to decide an issue it should have decided—the misconduct issue?
- Did the General Division make a legal error in its decision by not applying the legal test for misconduct?
- Did the General Division make an important factual error about the Claimant's reasons for filing his reconsideration request late or his ongoing intention to file a reconsideration?

Analysis

[9] The Claimant hasn't shown the General Division made an error. So I can't intervene in the General Division's decision. The rest of this decision sets out the analysis that led me to this conclusion.

[10] The law allows me to intervene in a General Division decision where a claimant can show the General Division:

- used an unfair process
- acted beyond its powers or refused to use its powers
- made a legal error in its decision (such as misinterpreting the law or using the wrong legal test)

- based its decision on an important factual error²

[11] The Claimant argued in writing the General Division didn't follow a fair procedure, made an error of jurisdiction, and made an error of law.³ At the hearing, the Claimant also argued the General Division made two factual errors.

The General Division followed a fair process

[12] The General Division makes an error if it uses an unfair process.⁴

[13] The Claimant argues the General Division didn't send him a letter telling him about his right to request a reconsideration. He says this was unfair.

[14] I asked him during the hearing whether he meant the **Commission** didn't send him a decision letter. He said he confused the two institutions—the Commission and the General Division of the Tribunal. He meant the Commission didn't send him a decision letter. So the Claimant wasn't arguing the **General Division** used an unfair process because of this.

[15] The Claimant also argues the General Division acted unfairly when it wouldn't let him give evidence and make arguments about the misconduct issue.

[16] This wasn't unfair to the Claimant. The legal issues the General Division had to consider and decide were about the lateness of his reconsideration request. The General Division didn't have the legal power to consider and decide the misconduct issue. In other words, the Claimant's evidence and arguments about misconduct weren't relevant. So it wasn't unfair for the General Division to refuse to hear them.

² Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) calls these the "grounds of appeal." I wrote these grounds in plain language rather than the exact words the law uses.

³ The Claimant checked the boxes for these errors on page AD-4 of his Application to the Appeal Division.

⁴ See section 58(1)(a) of the DESD Act.

The General Division acted within its powers and didn't refuse to use its powers

[17] The General Division makes an error if it acts beyond or refuses to exercise its decision-making power.⁵ In other words, the General Division makes an error if it decides an issue it has no power to decide **or** doesn't decide an issue it has to decide.

[18] The Claimant argues the General Division made an error when it "summarily dismissed" his challenge to the Commission's misconduct decision.⁶ He says the General Division should have held a hearing about whether he lost his job for misconduct. But it refused to do that.

[19] The Commission didn't make a reconsideration decision on the misconduct issue. So the Claimant **could not appeal** that issue to the General Division.⁷ Because there was no appeal of the misconduct issue, the General Division didn't have the legal authority to consider and decide that issue. So its refusal to hear that issue wasn't an error.

[20] The General Division correctly stated the legal issues it had to consider and decide at paragraphs 15 to 17 of its decision. These issues were about the Claimant's reconsideration request—whether it was late, whether the Commission acted judicially when it refused to extend the 30-day filing deadline, and whether the Claimant met the legal test to get an extension. The General Division considered and decided those issues.

[21] So the General Division didn't act beyond its powers or refuse to use its powers. It didn't make this type of error.

⁵ Section 58(1)(a) of the DESD Act says it's a ground of appeal where the General Division acts beyond or refuses to exercise its jurisdiction. Jurisdiction means the legal power to decide.

⁶ The Claimant says this at page AD4-2 of his written arguments.

⁷ See section 113 of the EI Act.

The General Division didn't make a legal error by not applying the test for misconduct

[22] The General Division makes a legal error if it doesn't use the correct legal test, misinterprets the law, misapplies a legal test, doesn't give adequate reasons for its decision, or makes a finding of fact with no evidence to support it.

[23] At the General Division, the Claimant challenged the Commission's decision to deny him EI benefits because he lost his job for misconduct. For the reasons I wrote in the section above, the General Division could not consider the misconduct issue. So it didn't make a legal error by not applying the legal test for misconduct.

[24] I sent the parties a letter explaining the legal issues they should focus on at the Appeal Division.⁸ Despite this, the Claimant focused his arguments on the misconduct issue. Because he didn't have legal representation, I reviewed the General Division's decision to see if it made any legal errors.

[25] The General Division correctly stated:

- the law about what it means for the Commission to “communicate its decision” to a person (at paragraph 30)
- the legal test the Claimant had to meet to get an extension of time to file a reconsideration request (at paragraphs 18 to 24, 42, and 43).⁹
- the legal test to decide whether the Commission exercised its discretion to extend time in a judicial manner (at paragraph 26)
- that it could only decide whether to extend the time if it found the Commission hadn't exercised its discretion judicially (at paragraph 27)

⁸ The letter I sent the parties is AD6.

⁹ That legal test is set out in the *Reconsideration Request Regulations* (RRR). Section 112 (1)(b) gives the Commission power to extend the 30-day deadline in section 112 (1)(a) of the EI Act.

[26] Then the General Division correctly applied those legal tests to the relevant evidence.¹⁰ And it didn't ignore any relevant arguments made by the parties.

[27] So the General Division didn't make a legal error.

The General Division didn't make an important factual error

[28] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring evidence or by misunderstanding or mistaking the evidence.¹¹

[29] Disagreeing with how the General Division weighed the evidence doesn't count as an important factual error. And the Appeal Division can't re-weigh the evidence considered by the General Division.

[30] The Claimant argued the General Division made two errors in dealing with the evidence. These supposed errors focus on the evidence he gave about his reasons for filing his reconsideration request late, and about his ongoing intention to file a reconsideration.

[31] Based on my review of the evidence at the General Division and its decision, I am satisfied it didn't make an important factual error.

– The General Division didn't ignore relevant evidence, it weighed the evidence it had to

[32] The Claimant argues the General Division didn't give enough weight to the written documents, compared to the Commission's notes of what he said during calls.

[33] The General Division heard the Claimant's evidence at the hearing, and considered and weighed it with the documents the Commission sent in. The General

¹⁰ I note that the General Division correctly used only section 1(1) of the RRR, because it found the Claimant reconsideration request was less than a year late. See paragraphs 40 to 43 of its decision.

¹¹ Section 58(1)(c) of the DESD Act says it's a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this ground of appeal using plain language, based on the words in the Act and the cases that have interpreted the Act.

Division asked the Claimant detailed questions about the timing of his reconsideration request and why he filed it when he did. Then in paragraphs 45, 47, 56, 65, and 67 of its decision, it accurately set out and weighed **all the relevant evidence**.

[34] I can't review the weight the General Division assigned to the evidence.

[35] So the General Division didn't ignore the evidence and make an important factual error.

– **The General Division didn't ignore or misunderstand the Claimant's evidence about context and timing**

[36] The Claimant argues the General Division didn't understand the context and timing of what was going on in his life at the time.

[37] At the General Division hearing, he explained it was an exceptionally stressful time for him. He was stressed because of COVID, job losses (his and other family members'), not getting EI, looking for work, and starting a new job. He said his stress prevented him from finding out about his rights. And it prevented him from filing his reconsideration request on time.

[38] The Claimant is arguing the General Division got his evidence about this wrong (a misunderstanding or a mistake) or ignored his evidence.

[39] I disagree.

[40] The General Division decision sets out the Claimant's evidence about what was going on in his life. Then it decided what evidence was relevant to whether he had a **reasonable explanation for the delay** filing his reconsideration. The General Division:

- accurately summarized the Claimant's evidence about his life stress and how it affected his ability to file his reconsideration on time (at paragraph 56, see bullet points 5, 6, and 9)¹²

¹² The General Division was dealing with whether the Claimant had a reasonable explanation for asking for an extension of time, which comes from section 1(1) of the RRR.

- accepted that he was highly stressed (at paragraph 58)
- found his circumstances didn't relieve him from following the timelines and his responsibilities under the EI Act (at paragraph 58)
- concluded **nothing prevented him from asking for a reconsideration sooner** than he did (at paragraph 59)

[41] So the General Division didn't base its decision on a factual finding about his **explanation for the delay** that it made by ignoring, misunderstanding, or mistaking the relevant evidence.

[42] The General Division then considered whether the Claimant had **an ongoing intention** to request a reconsideration. The General Division:

- accurately summarized the Claimant's evidence about his life stress (at paragraph 65, see bullet 4)¹³
- weighed all the evidence relevant to that legal issue
- was persuaded by evidence that showed he didn't form the intention to request a reconsideration until he learned about a tribunal decision he could use to challenge the Commission's misconduct disqualification (at paragraph 66)
- concluded he didn't have an ongoing intention because he took steps to request a reconsideration **only after** he learned of that decision (at paragraph 69)

[43] So the General Division didn't base its decision on a factual finding about his **ongoing intention** to request a reconsideration that it made by ignoring, misunderstanding, or mistaking the relevant evidence.

¹³ The General Division was dealing with whether the Claimant had shown a continuing intention to request a reconsideration, which comes from section 1(1) of the RRR.

– **Summary: no important factual error**

[44] The Claimant forcefully disagrees with the conclusions the General Division made based on its assessment of the evidence—the evidence it considered relevant and the weight it gave to that evidence. But he hasn't shown the General Division made an important factual error.

Conclusion

[45] I am dismissing the Claimant's appeal because he hasn't shown the General Division made any errors. This means the General Division decision stands.

Glenn Betteridge
Member, Appeal Division