



Citation: *RP v Canada Employment Insurance Commission*, 2024 SST 522

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: R. P.

Respondent: Canada Employment Insurance Commission
Representative: Jessica Earles

Decision under appeal: General Division decision dated July 5, 2023
(GE-23-884)

Tribunal member: Glenn Betteridge

Decision date: January 5, 2024
File number: AD-23-829

Decision

[1] I am allowing R. P.'s appeal and sending his case back to the Tribunal's General Division to reconsider.

[2] He and the Canada Employment Insurance Commission (Commission) agree the General Division made a legal error in its decision. They also agree I should send his case back to the General Division to reconsider.

[3] I accept their agreement.

Overview

[4] R. P. is the Claimant in this appeal. I am calling him the Claimant because he made a claim for Employment Insurance (EI) benefits.

[5] The Commission assessed his claim and decided he voluntarily left his job without just cause under the *Employment Insurance Act* (EI Act).¹ So it didn't pay him benefits.

[6] The Commission says the Claimant filed his reconsideration request a little over nine months later, which was one month after he filed a new application for benefits. In other words, his reconsideration request was late. The Commission refused to extend the time for him to request a reconsideration.

[7] This Tribunal's General Division agreed with the Commission's decision to not extend the time. So it dismissed the Claimant's appeal. The Claimant appealed to the Appeal Division, which gave him permission to appeal the General Division's decision.

¹ Sections 30(1) and (2) of the *Employment Insurance Act* (EI Act) says a person who voluntarily leaves their job without just cause is disqualified from receiving any benefits for each week of their benefit period. In other words, they can't get EI benefits.

[8] Now the Claimant and the Commission (parties) agree the General Division made a legal error.² They also agree that I should send the Claimant's case back to the General Division to be reconsidered.

The parties agree on the outcome of the appeal

[9] The parties reached an agreement at a case conference that turned into a settlement conference. Here is a summary of what they agreed to:

- The General Division made a legal error in its decision when it didn't use the correct legal test.
- I should allow the Claimant's appeal and send his appeal back to the General Division to be reconsidered.

I accept the proposed outcome

[10] The law says a person has 30 days to ask the Commission to reconsider its decision.³ If a person files their reconsideration request within 30 days, their request is on time. If a person makes their request after the 30-day time limit, it's late. But the Commission can extend the time for them to file their request.⁴ When it decides whether to extend the time, it has to apply the *Reconsideration Request Regulations* (RRR).

[11] The Commission's power to extend time is discretionary. In other words, the Commission gets to decide whether or not to extend the time. But the Commission has to **act judicially** when it makes that decision.⁵

[12] So the General Division had to:

² An error of law is a ground of appeal under section 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

³ See section 112(1)(a) of the *Employment Insurance Act* (EI Act). It says a person has to make their request, "within 30 days after the day on which a decision is communicated to them."

⁴ See section 112(1)(b) of the EI Act.

⁵ See *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA). The Court said that, to act judicially, a decision-maker must not: (a) act in bad faith; (b) act for an improper purpose or motive; (c) take into account an irrelevant factor; (d) ignore a relevant factor; or (e) act in a discriminatory way.

- **First**, decide whether the Claimant filed his reconsideration request on time.
- **Second**, if he filed it late, decide whether the Commission acted judicially when it decided not to extend the time for him to make his reconsideration request.
- **Third**, if the General Division found the Commission didn't act judicially, it had the power to make the decision the Commission should have made. In other words, the General Division could decide whether to extend the time for the Claimant by applying the RRR.

[13] The parties agreed the General Division made a **legal error** when it didn't use the correct legal test to decide the Claimant's appeal.⁶ I agree.

[14] The General Division decided the Claimant's reconsideration request was late (first step). Then it went directly to the third step. It decided not to extend the time for the Claimant to file his reconsideration request. The General Division skipped the second step. It didn't consider whether the Commission acted judicially when it refused to extend the time for the Claimant to file his reconsideration request. (In its conclusion, the General Division says the Commission exercised its discretion in a judicial manner. But it didn't support this conclusion with any analysis.) Skipping the second step was a legal error.

[15] The General Division made another legal error. It misinterpreted section 1(1) of the RRR. Instead of considering the factors set out in that section—a reasonable explanation for requesting a longer period and a continuing intention to request a reconsideration—the General Division considered whether the Claimant had "good cause" for his delay. In other words, the General Division applied the wrong legal test.

[16] Finally, the General Division made a legal error when it failed to apply section 1(2) of the RRR. The Claimant made another application for benefits after the Commission communicated its decision to him. This means the General Division had to

⁶ A legal error is a ground of appeal under section 58(1)(b) of the DESD Act. That section uses the words, "erred in law in making its decision."

consider whether the Claimant met the conditions in **section 1(2)**—his reconsideration request had a reasonable chance of success and granting an extension for time wouldn't prejudice the Commission.⁷ It didn't do that.

[17] Because I have found the General Division made a legal error, I have the power to fix the error.⁸ The parties agreed that I should send the Claimant's case back to the General Division to reconsider.

[18] When the General Division uses the wrong legal test, a claimant might not have a full opportunity to present their evidence and arguments based on the correct legal test. In this case, the General Division applied the wrong legal test in three ways. So it makes sense to send the Claimant's case back to the General Division to reconsider.

Conclusion

[19] I am allowing the Claimant's appeal and sending his case back to the General Division to reconsider.

Glenn Betteridge
Member, Appeal Division

⁷ See section 1(2)(b) of the *Reconsideration Request Regulations*.

⁸ Section 59(1) of the DESD Act gives this power to the Tribunal's Appeal Division.