



Citation: *KW v Canada Employment Insurance Commission*, 2024 SST 76

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	K. W.
Respondent:	Canada Employment Insurance Commission
Representative:	Nikkia Janssen
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Decision under appeal:	General Division decision dated August 30, 2023 (GE-23-1705)
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Tribunal member:	Melanie Petrunia
Type of hearing:	Teleconference
Hearing date:	January 22, 2024
Hearing participants:	Appellant Respondent's representative
Decision date:	January 25, 2024
File number:	AD-23-872

Decision

[1] The appeal is allowed. The matter will go back to the General Division for reconsideration.

Overview

[2] The Applicant, K. W. (Claimant), applied for and received regular employment insurance (EI) benefits while attending school. The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant was not entitled to benefits from September 8, 2021, to June 24, 2022, while she was attending school because she had not proven her availability for work.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division, but her appeal was filed late. The General Division decided not to grant the Claimant an extension of time for filing her appeal.

[4] The Claimant argues that she was not aware that her appeal was filed late by her representative. She says that she did not receive any communication from the Tribunal or her representative about the late appeal. The Commission agrees that the Claimant was not given an opportunity to provide relevant information.

The parties agree on the outcome of the appeal

[5] The parties agree that the appropriate remedy is to send the matter back to the General Division to decide whether an extension of time should be granted.

I accept the proposed outcome

[6] The reconsideration decision that the Claimant appealed was dated November 16, 2022. The Claimant had 30 days to appeal to the Tribunal. Her representative filed the Notice of Appeal on June 20, 2023.¹

¹ GD2

[7] In its decision the General Division found that the appeal was late and considered whether the Claimant had a reasonable explanation for filing the appeal late. It explained that a letter was sent to the Claimant's representative on August 17, 2023 asking for additional information regarding the late appeal. A deadline of August 28, 2023 was provided in the letter.²

[8] There was no response to the letter of August 17, 2023. The General Division decided that the Claimant did not have a reasonable explanation for filing her appeal late.³

[9] The Claimant says that she was not aware that her appeal was filed late. She explains that she received assistance from the office of her Member of Parliament with the reconsideration process. When the reconsideration request was denied, she was told that her representative would submit the appeal.⁴

[10] The Claimant says that she checked in regularly for updates about her appeal and was only told that there was a long waitlist so it would not likely be looked at until March 2023. She did not find out that the appeal was submitted late until September 2023, and no one has told her why it was submitted late. The Claimant believed that the appeal was submitted in December 2022.⁵

[11] The Notice of Appeal was not submitted until June 2023, but the first page of the document is a cover letter from the Claimant's representative dated December 5, 2022, indicating that he will be representing her. The attached Notice of Appeal is unsigned.⁶

[12] The Claimant says that she was not notified by her representative that the appeal was filed late. The date on the letter supports her statement that she believed it was filed in December 2022, which would have been on time.

² General Division decision at para 11.

³ General Division decision at para 11.

⁴ AD1-4

⁵ AD1-4

⁶ GD2

[13] The Claimant also indicated in the Notice of Appeal form that she was authorizing a representative, but she did not sign the appeal form. She did not check the box indicating an authorization to communicate by email.

[14] The parties agree that neither the Claimant nor her representative authorized the Tribunal to communicate by email. The request for additional information about why the appeal was late was only sent by email.

[15] I agree with the parties that the Claimant did not have an opportunity to present her case to the General Division. The General Division, though unknowingly, failed to provide a fair process when it relied on the fact that the Claimant did not respond to the request for more information as a reason to refuse the extension of time to appeal.

[16] I cannot consider new evidence, and the explanation that the Claimant has provided for why her appeal was late was not before the General Division. I agree that the appropriate remedy is to send the matter back to the General Division for reconsideration.

Conclusion

[17] The appeal is allowed.

[18] The General Division failed to provide a fair process and overlooked relevant evidence in its decision. I am returning the matter to the General Division for reconsideration.

Melanie Petrunia
Member, Appeal Division