



Citation: *Canada Employment Insurance Commission v JN*, 2024 SST 384

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Gilles-Luc Bélanger

Respondent: J. N.

Decision under appeal: General Division decision dated November 20, 2023
(GE-23-2689)

Tribunal member: Glenn Betteridge

Type of hearing: Videoconference

Hearing date: March 26, 2024

Hearing participants: Appellant's representative
Respondent

Decision date: April 18, 2024

File number: AD-23-1097

Decision

[1] I am allowing the Canada Employment Insurance Commission's (Commission) appeal.

[2] The Commission and J. N. agree the General Division made a legal error. But they don't agree on how I should fix (remedy) the error.

[3] I am sending his case back to the General Division to reconsider.

Overview

[4] I will call J. N. the Claimant because he made a claim for Employment Insurance (EI) benefits. The Commission paid him benefits.

[5] Later on the Commission went back and investigated his claim.

[6] On **June 27, 2022**, it decided he didn't qualify for benefits because he voluntarily left his job without just cause. It also decided he wasn't entitled to get benefits when he wasn't available for work. And it found he didn't declare his earnings. As a result of these decisions, he had a large overpayment. The Commission mailed him a **decision letter** and a notice of debt.

[7] On **August 9, 2023**, the Commission received his request for reconsideration of its decision. The Commission decided his request was late. And it **refused to extend the 30-day deadline** for him to file it. The Claimant appealed the Commission's refusal to this Tribunal's General Division.

[8] The General Division allowed his appeal. It extended the 30-day deadline for him to file his reconsideration request. The Commission appealed that decision to the Appeal Division.

[9] Now the parties agree the General Division made a legal error. But they don't agree on how I should fix (remedy) that error.

Issues

[10] There are two issues in this appeal

- Did the General Division make a **legal error** when it applied the wrong legal test—including ignoring court decisions it had to follow?
- If the General Division made a legal error, how should I fix (remedy) the error?

Analysis

[11] The Appeal Division’s role is different than the General Division’s role. The law allows me to step in and fix a General Division decision where a claimant shows the General Division made a **legal error**.¹

– The General Division made a legal error when it didn’t use the correct legal test

[12] The General Division makes a **legal error** when it doesn’t use the correct legal test, or it doesn’t follow a court decision it has to follow.

[13] The Commission argued the General Division made a legal error when it extended the 30-day deadline **without first deciding** that the Commission didn’t act judicially when it refused to extend the deadline. At the hearing, the Claimant agreed with the Commission.

[14] I agree with the parties. The General Division made that legal error in its decision.

[15] The law says a person has 30 days to ask the Commission to reconsider a decision.² If a person makes their reconsideration request within 30 days, their request

¹ Section 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act) calls this a “ground of appeal.” I have used the word “error.”

² See section 112(1)(a) of the *Employment Insurance Act* (EI Act). It says a person has to make their reconsideration request, “within 30 days after the day on which a decision is communicated to them.”

is on time. If a person makes their request after the 30-day deadline, **it's late**.

[16] Where a request is late, the **Commission can extend the 30-day deadline**.³ When the Commission decides whether to extend the deadline, it has to follow the *Reconsideration Request Regulations* (RRR).⁴ And it has to **act judicially** when it makes its decision, based on what the courts have said this means.⁵

[17] The courts have also decided the General Division can't review the Commission's refusal to extend the 30-day deadline **unless it first decides the Commission didn't act judicially** when it made that decision.⁶ If the General Division decides the Commission exercised its power judicially, it has no power to review the Commission's refusal to extend the deadline.

[18] The General Division **didn't apply the correct legal test** in the Claimant's appeal. It decided to extend the 30-day deadline **without first deciding** whether the Commission acted judicially when it refused to extend the deadline.

[19] This means the General Division made a legal error.⁷

I am fixing (remedying) the error by sending the case back to the General Division to reconsider

[20] The law gives me the power to fix the General Division's error.⁸

³ See section 112(1)(b) of the EI Act.

⁴ To get an extension of time under the *Reconsideration Request Regulations* (RRR), a person has to show they meet **all the factors** that apply to their situation. Everyone has to show they meet **the two factors** in section 1(1). A person whose request is more than 365 days late, or who made another application for EI benefits, has to meet **two more factors** in section 1(2).

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.

⁶ See for examples of these decisions, *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA); *Canada (Attorney General) v Chartier*, A-42-90 (FCA); and *Canada (Attorney General) v Dunham*, 1996 CanLII 3967 (FCA).

⁷ There is another way to look at the General Division's error. It could be a **jurisdictional error**, which is also a ground of appeal under DESD Act section 58(1)(a). The General Division **lost its power to decide the appeal (its jurisdiction)** because it **didn't decide an issue it had to decide**. That issue was whether the Commission **exercised its power judicially** when it refused to extend the 30-day deadline.

⁸ Section 59(1) of the DESD Act gives the Appeal Division its power to fix (remedy) errors made by the General Division.

[21] The Claimant and the Commission don't agree on how I should fix the error. The Claimant said it would be fair for me to make the decision. The Commission says I should send the case back to the General Division to reconsider.

[22] I agree with the Commission.

[23] The Tribunal's rules of procedure say the Tribunal should **actively adjudicate** appeals so the parties can participate fully in the appeal process.⁹ This means the Tribunal can decide what issues need to be addressed in an appeal. And it can give an unrepresented claimant information about the law and evidence in an appeal.

[24] The Claimant was unrepresented. At the General Division hearing the Claimant said he has a learning disability and a history of mental health issues, including PTSD. These negatively affect his ability to deal with stressful things on time and appropriately. He also said he wasn't sure whether he received the documents the Tribunal sent to him.

[25] At the hearing the General Division didn't identify an important issue in his appeal—the same issue it left out of its decision—whether the **Commission acted judicially when it refused to extend** the 30-day deadline for him to request a reconsideration.¹⁰ This meant the Claimant didn't get **a full and fair opportunity to give evidence and make arguments** at the General Division.

[26] The Appeal Division can't accept new evidence.

[27] So I am fixing the General Division's error by sending his case back to the General Division to reconsider. This should give him a full and fair opportunity to present his evidence and arguments on the issues in his appeal.

⁹ My reasons in this paragraph are based on sections 6, 8(2), and 17 of the *Social Security Tribunal Rules of Procedure*.

¹⁰ Listen to the recording of the General Division hearing at 7:35 to 9:20. Here is how the member explained the issue in the appeal: "I have to decide if you have the right to go back and ask them [the Commission] to look at their decision. ... All we are going to look at today is why it took you over a year for you to decide to ask them about it. ... It's about explaining that timeline and why it took so long."

Conclusion

[28] I am allowing the Commission's appeal because the General Division made a legal error.

[29] I am fixing (remedying) the error by sending the Claimant's case back to the General Division to reconsider.

Glenn Betteridge

Member, Appeal Division