



Citation: *JS v Canada Employment Insurance Commission*, 2024 SST 117

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	J. S.
Respondent:	Canada Employment Insurance Commission
Representative:	J. Lachance
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Decision under appeal:	General Division decision dated December 18, 2023 (GE-23-3415)
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Tribunal member:	Melanie Petrunia
Type of hearing:	Teleconference
Hearing date:	February 7, 2024
Hearing participant:	Respondent's representative
Decision date:	February 8, 2024
File number:	AD-23-1127

Decision

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

Overview

[2] The Appellant, J. S. (Claimant), applied for employment insurance (EI) benefits on October 24, 2023, but asked that the application be treated as though it was made earlier, on March 26, 2023.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) refused the Claimant's request. It decided that he hadn't shown good cause for the delay in applying.

[4] The Claimant's appeal to the General Division was dismissed. The General Division found that the Claimant had good cause for the delay from May 21, 2023 until he applied for benefits. Because the Claimant did not show that he had good cause for the entire period of the delay, the General Division found that his application could not be treated as though it was made earlier.

[5] The Claimant is now appealing the General Division decision. He argues that The General Division made an error of jurisdiction by not deciding whether his application could be antedated to May 21, 2023. The Commission also says that the General Division made an error of law and based its decision on important factual errors.

[6] I am allowing the appeal. The General Division made errors of law in its decision. I am returning the matter to the General Division for reconsideration.

Preliminary matters

[7] The Claimant did not attend the hearing. I am satisfied that the Claimant received the Notice of Hearing and was aware of the time and date of the hearing.¹ I proceeded with the hearing without the Claimant.²

Issues

[8] The issues in this appeal are:

- a) Did the General Division make an error of law when it found that the Claimant's application could not be antedated to May 21, 2023?
- b) Did the General Division err in law by failing to meaningfully analyze the evidence when it found that the Claimant had good cause from May 21, 2023 to October 24, 2023?
- c) If so, how should the error be fixed?

Analysis

[9] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:³

- 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.

¹ Telephone log dated January 30, 2024 shows that the Claimant confirmed he received the Notice of Hearing and was aware of the hearing date and time.

² Section 58 of the *Social Security Tribunal Rules of Procedure* says that I can do this.

³ 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).

– Background

[10] The Claimant lost his job on February 28, 2023.⁴ He tried to find another job over the next few months.⁵ Eventually, his mental health deteriorated and he sought professional help.⁶

[11] The Claimant was able to find a job in August and worked from August 21, 2023 to September 22, 2023.⁷ He applied for employment insurance (EI) regular benefits on October 24, 2023. The following day, he contacted Service Canada and asked to have his application antedated to March 26, 2023. The request was denied.⁸

– The General Division decision

[12] The General Division had to decide whether the Claimant could antedate his application for EI benefits. To do so, the Claimant had to show “good cause” for filing his application for EI benefits late for the entire period of the delay. In order for a claim to be antedated, the Claimant also has to establish that he qualified for benefits on the earlier date.⁹

[13] To establish good cause, the Claimant has to show that he did what a reasonable person would have done in similar circumstances to satisfy himself of his rights and obligations under the law.¹⁰ This includes an obligation to take reasonably prompt steps to determine if he qualifies for benefits.

[14] The General Division considered the Claimant’s reasons for delaying his application for benefits. He argued that he is an immigrant to Canada and did not know

⁴ GD3-14

⁵ General Division decision at para 22.

⁶ General Division decision at para 29.

⁷ GD3-16

⁸ GD3-18

⁹ See section 10(4) of the *Employment Insurance Act* (EI Act).

¹⁰ See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4 and *Canada (Attorney General) v Mendoza*, 2021 FCA 36 at paragraphs 13 and 14.

about EI when he first lost his job.¹¹ He focused on finding work and took out payday loans to support himself.¹²

[15] The General Division found that the Claimant's lack of knowledge about EI and use of payday loans did not show good cause. It cited case law in support of these findings.¹³

[16] The General Division considered the Claimant's arguments concerning his mental health. He told the General Division that he began to feel depressed in late May 2023. His friends made him an appointment with his doctor and connected him with mental health crisis support.¹⁴

[17] The Claimant testified that he began to feel better in August and returned to work on August 21, 2023. When he was laid off from that job on September 22, 2023, he learned about EI benefits.¹⁵ He submitted an application for benefits on October 24, 2023.

[18] The General Division found that the Claimant had good cause for the delay in applying for benefits from May 21, 2023 to when he applied, on October 24, 2023.¹⁶ It found that he was in a severe mental health crisis that would have prevented him from asking about or applying for EI benefits.¹⁷

[19] The General Division decided that the Claimant's application could not be antedated to March 26, 2023 because he did not have good cause for the entire period of delay.¹⁸

¹¹ General Division decision at para 15.

¹² General Division decision at paras 22 to 24.

¹³ General Division decision at paras 18 to 20 and para 24.

¹⁴ General Division decision at para 29.

¹⁵ General Division decision at para 30.

¹⁶ General Division decision at para 32.

¹⁷ General Division decision at para 31.

¹⁸ General Division decision at para 34.

The General Division made errors of law

[20] In his application for leave to appeal, the Claimant says that his claim should be started on May 21, 2023, if the General Division found that he had good cause from that date.¹⁹ The Commission agrees that the General Division misstated the law when it found that it could not consider whether the Claimant's application for benefits could be antedated to May 21, 2023.²⁰

[21] The General Division found that the Claimant had good cause from May 21, 2023 until he applied for benefits. The Claimant had requested that his application be antedated to March 26, 2023. The General Division found that the Claimant did not have good cause from March 26 to May 21, 2023 so his application could not be antedated. It stated that the outcome might have been different if he had requested an antedate to May 21, 2023.²¹

[22] The legislation says that a claim can be considered to have been made on an earlier date if a claimant show good cause for the period from the earlier date until the claim was made.²² Because the period that the General Division found the Claimant did have good cause immediately preceded when his application for benefits was filed, the General Division could have considered whether the Claimant's application could be antedated to May 21, 2023. The General Division misinterpreted the legislation, which is an error of law.

[23] The Commission argues that the General Division also failed to meaningfully analyze the evidence when it found that the Claimant had good cause from May 21, 2023 to October 24, 2023. The General Division noted that the Claimant testified that he started to feel better in August and returned to work.

[24] After he was laid off, the Claimant waited one month to apply for benefits. The General Division did not explain how the Claimant's mental health continued to prevent

¹⁹ AD1-5

²⁰ AD4-4

²¹ General Division decision at para 1 (This paragraph number appears to be a mistake. It is found between paras 35 and 36).

²² *Employment Insurance Act*, section 10(4).

him from applying for benefits after August 2023, when he began to feel better and returned to work.

[25] The Claimant's testimony that his mental health improved, and the fact that he was able to return to work contradict the General Division's finding that he had good cause for the entire period from May 21 to October 24, 2023. The Claimant also said that he learned about EI benefits when he was laid off on September 22, 2023. The General Division did not ask the Claimant why he waited another month to apply for benefits.

[26] I find that the General Division failed to meaningfully analyze the evidence when it found that the Claimant had good cause from May 21, 2023 to October 24, 2023. This is an error of law.

I am returning the matter to the General Division

[27] To fix the General Division's error, I can give the decision that the General Division should have given, or I can refer this matter back to the General Division for reconsideration.

[28] The parties agree that the General Division made errors in its decision. The Commission says that the matter should go back to the General Division for reconsideration. I agree.

[29] The General Division did not ask the Claimant about his circumstances after he was laid off on September 22, 2023, and there is no evidence in the file about this period. The General Division also did not consider whether the Claimant qualified for benefits on the earlier date, when it found that he had good cause for part of the period of delay.

[30] The Claimant made new arguments and provided new evidence about the period before May 21, 2023, in his written submissions.²³ The Commission also indicated that it has evidence that is relevant to the issue of the Claimant's qualification for benefits on

²³ AD1C

the earlier date. I cannot consider any new evidence at the Appeal Division and have not taken these documents or submissions into account.

[31] It is clear that the record is not complete, and I cannot make the decision that the General Division should have made. I am returning the matter to the General Division for reconsideration so that the Claimant will have an opportunity to address his actions during the full period of delay, and whether he qualified to receive benefits at an earlier date.

Conclusion

[32] The appeal is allowed. The General Division made errors of law in its decision. The matter will return to the General Division for reconsideration.

Melanie Petrunia
Member, Appeal Division