



Citation: *LW v Canada Employment Insurance Commission*, 2024 SST 512

**Social Security Tribunal of Canada  
General Division – Employment Insurance Section**

**Decision**

**Appellant:** L. W.  
**Representative:** J. W.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision dated December 4, 2023 (issued by Service Canada)

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**Tribunal member:** Elyse Rosen  
**Decision date:** March 23, 2024  
**File number:** GE-24-605

## Decision

[1] The appeal won't go ahead. I'm not giving the Appellant more time to appeal. In other words, I'm not accepting the late appeal. This decision explains why.

## Overview

[2] The Canada Employment Insurance Commission (Commission) made a decision in the Appellant's case. The Appellant asked the Commission to reconsider. The Commission reconsidered and sent the Appellant a letter about its reconsideration decision on December 4, 2023.

[3] The Appellant disagreed with the reconsideration decision, so he appealed it to the Social Security Tribunal (Tribunal) on February 10, 2023.

[4] There is a deadline for appealing to the Tribunal. An appellant who appeals late has to explain why they are late.<sup>1</sup> The Tribunal will give more time to appeal if the appellant has a reasonable explanation for why they are late.<sup>2</sup>

[5] The Appellant was asked to provide an explanation for why his appeal was late. He didn't do so. He only provided an explanation of his interactions with the Commission and why he thinks the Commission's decision is wrong.<sup>3</sup>

## Issue

[6] I have to decide the following two issues:

- a) Is the Appellant's appeal late?
- b) If so, does he have a reasonable explanation for why his appeal is late?

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<sup>1</sup> See section 27(1) of the *Social Security Tribunal Rules of Procedure* (Rules).

<sup>2</sup> Section 52(2) of the *Department of Employment and Social Development Act* (DESD Act) says that the Social Security Tribunal may allow up to a year. See also section 27(2) of the Rules.

<sup>3</sup> GD7.

## Analysis

[7] If an appellant disagrees with the Commission's reconsideration decision, they can appeal to the Tribunal.<sup>4</sup> They have to appeal within 30 days after the Commission told them about the decision.<sup>5</sup>

### The Appellant's appeal is late

[8] I find that the Appellant's appeal is late.

[9] The Commission has to prove that it told the Appellant about its decision.<sup>6</sup> The Commission has to prove this on a balance of probabilities. This means that it has to show that it is more likely than not that it told the Appellant about its decision when it says it did.

[10] The Commission's decision is dated December 4, 2023. It was sent to the Appellant by mail. Canada Post usually delivers mail within 10 days in Canada. And I know that the Appellant got the decision. This is because he included a copy of it with his appeal.

[11] The Appellant says it was in his mailbox, possibly for as long as 10 days after it was received.<sup>7</sup>

[12] Even if I accept that it took the Appellant 10 days to collect his mail, he would have become aware of the decision by December 24, 2023.

[13] The Appellant had 30 days after learning about the decision on December 24, 2023, to appeal to the Tribunal. He appealed on February 10, 2024. He missed the 30-day deadline. This means that the Appellant's appeal is late.

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<sup>4</sup> See section 113 of the *Employment Insurance Act*.

<sup>5</sup> See section 52(1)(a) of the DESD Act.

<sup>6</sup> See *Bartlett v Canada (Attorney General)*, 2012 FCA 230.

<sup>7</sup> See GD7-1.

## **The Appellant doesn't have a reasonable explanation**

[14] I find that the Appellant didn't give a reasonable explanation for why his appeal is late.

[15] In his notice of appeal, the Appellant says his appeal isn't late because he sent the appeal within 30 days of getting the application.<sup>8</sup> I asked him to explain what he meant by this.<sup>9</sup> But he hasn't explained what he meant.

[16] I also asked him to confirm the date he received the Commission's decision<sup>10</sup>, but he hasn't done so.

[17] His representative claims that he filed his appeal on January 9, 2024.<sup>11</sup> But the Tribunal has no record of an appeal being filed on that date, and the Appellant hasn't provided any evidence that he filed his appeal on that date.<sup>12</sup> And his notice of appeal, which he filed out by hand, is dated February 9, 2024. It was emailed to the Tribunal on February 10 at 1:28 a.m.<sup>13</sup>

[18] The Appellant sent additional information in answer to the Tribunal's multiple requests to explain why his appeal is late, but the information he provided doesn't explain why his appeal is late.<sup>14</sup>

[19] The Appellant was given multiple opportunities to explain why his appeal was late. He was told what information the Tribunal needed in order to decide if he had a reasonable explanation. But unfortunately, no reasonable explanation has been provided.

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<sup>8</sup> GD2-6.

<sup>9</sup> GD6.

<sup>10</sup> GD6.

<sup>11</sup> See call log of March 11, 2024.

<sup>12</sup> His representative was asked to do so (see call log of March 20, 2024).

<sup>13</sup> GD2.

<sup>14</sup> GD7.

## **Conclusion**

[20] The Appellant didn't give a reasonable explanation for why his appeal is late. Because of this, I can't give the Appellant more time to appeal.

[21] This means the appeal won't go ahead.

Elyse Rosen

Member, General Division – Employment Insurance Section