



Citation: *MD v Canada Employment Insurance Commission*, 2024 SST 1178

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:

M. D.

Respondent:

Canada Employment Insurance Commission

Representative:

Daniel McRoberts

Decision under appeal:

General Division decision dated April 5, 2024
(GE-24-883)

Tribunal member:

Elizabeth Usprich

Decision date:

August 30, 2024

File number:

AD-24-310

Decision

[1] The appeal is allowed.

[2] The General Division made an important error of fact. The case must go back to the General Division for reconsideration.

Background

[3] M. D. is the Claimant. The Canada Employment Insurance Commission (Commission) decided his employer let him go due to misconduct. Because of this, he wasn't entitled to receive Employment Insurance (EI) benefits.¹

[4] The Claimant asked the Commission to reconsider this decision. The Commission didn't change its position.²

[5] The Claimant appealed to the Social Security Tribunal (Tribunal) General Division. The General Division denied the appeal because it said the Claimant waited too long to file his appeal.³

[6] The Claimant appealed to the Tribunal's Appeal Division because he says there is confusion about dates.

The parties agree on the outcome of the appeal

[7] The parties have asked for a decision based on their written agreements.⁴ The parties agreed there was an important error of fact in the General Division's decision. They also agreed the case should be returned to the General Division for reconsideration.

¹ See GD3-27 the Canada Employment Insurance Commission's (Commission) initial decision dated July 18, 2022.

² See GD3-62 the Commission's reconsideration decision dated December 12, 2022.

³ See the General Division decision at paragraph 8.

⁴ See AD3-5 which is the Commission's Representation about the error and proposed outcome and AD6-1 which is the Claimant's agreement to the outcome.

I accept the parties' agreement

[8] Section 52(1) of the *Department of Employment and Social Development Act* (DESD Act) says an appeal to the Tribunal's General Division must be brought within 30 days from when a decision was communicated. Section 52(2) allows the General Division to extend that time, but to no more than one year. So, when the decision is communicated to an individual is important.

[9] The General Division found the decision was communicated to the Claimant on December 23, 2022.⁵ But the Claimant listed five dates when he had received the reconsideration decision.⁶ The General Division didn't explain why it preferred the December 23, 2022, date over any of the other dates.

[10] The General Division didn't seek out information from the Claimant or hold a hearing. It seems the General Division also overlooked evidence which suggests the Commission communicated the decision on December 14, 2022.⁷

[11] There was an incomplete review of the evidence, including evidence which was overlooked. I accept the agreement of the parties that there is an important error of fact. I accept the remedy is to send this back to the General Division for reconsideration.

Conclusion

[12] The appeal is allowed.

[13] The General Division made an important error of fact. The case must go back to the General Division for reconsideration.

Elizabeth Usprich
Member, Appeal Division

⁵ See the General Division decision at paragraph 4.

⁶ See GD2-16 at box 6 where the four dates are listed.

⁷ See GD3-61 which is the Commission's record of a call to the Claimant on December 14, 2022, about its decision.