



Citation: *MS v Canada Employment Insurance Commission*, 2024 SST 686

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: M. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration
decision dated (issued by Service Canada)

Tribunal member: Jean Yves Bastien

Decision date: February 28, 2024

File number: GE-23-3241

Decision

[1] The appeal won't go ahead. I am not giving the Appellant more time to appeal. In other words, I am 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.

[3] The Commission completed its reconsideration and then communicated its decision to Appellant by telephone on September 28, 2023. The Commission maintained its decision on the issue and denied the Appellant EI benefits.

[4] The Commission followed up and sent the Appellant a letter confirming its reconsideration decision the same day, September 28, 2023.

[5] The Appellant disagreed with the reconsideration decision, so she emailed a Notice of Appeal to the Social Security Tribunal (Tribunal) at the end of the week on November 17, 2023.

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

[7] The Appellant strenuously argues that her appeal wasn't late. Presumably because of this she does not attempt to address the issue of "lateness" despite having been asked to do so in three letters sent to her by the Tribunal.

¹ See section 27(1) of the *Social Security Tribunal Rules of Procedure* (Rules).

² 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.

Issue

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

- Is the Appellant's appeal late?
- If so, does she have a reasonable explanation for why her appeal is late?

Analysis

[10] If an appellant disagrees with the Commission's reconsideration decision, they can appeal to the Tribunal.³ They **have to** appeal within 30 days after the Commission told them about the decision.⁴

Is the Appellant's appeal late?

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

When did the Commission communicate its decision to the Appellant?

[12] I find it more likely than not that the Commission communicated its decision to the Appellant by telephone on the morning of September 28, 2023.

[13] The Commission has to prove that it told the Appellant about its decision.⁵ 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.

[14] It is the Commission's responsibility to communicate its decision to the Claimant.⁶ To communicate a decision, the Commission has to show that it told the Claimant about the "substance" and "effect" of its decision.⁷

³ See section 113 of the *Employment Insurance Act*.

⁴ See section 52(1)(a) of the DESD Act.

⁵ See *Bartlett v Canada (Attorney General)*, 2012 FCA 230.

⁶ See *Atlantic Coast Scallop Fishermen's Assn v Canada (Minister of Fisheries and Oceans)*, A-163-95, A-162-95.

⁷ *Cousins v Canada (Attorney General)*, 2007 FC 469.

[15] The Appellant says that she only received the Notice of Decision from the Commission when she received its letter in the mail on October 19, 2023, which is 21 days after the Commission sent her the notice by post.

[16] But records show that the Commission completed its reconsideration and then communicated its decision to Appellant by telephone at 11:23 am, Atlantic Standard time, on September 28, 2023. It told the Appellant that “without a valid work permit the disentitlement for an expired work permit remains on her claim. Client was advised that if she wants to pursue an appeal to the Social Security Tribunal the instructions to do so will be available on the letter she will receive as a notice of decision.”⁸

[17] The Federal Court tells us that: “The requirement that the decision be communicated” has been held by the Federal Court of Appeal to signify “some positive action... on the part of the decision-maker in order to communicate his decisions to the parties directly affected” (*Atlantic Coast Scallop Fishermen's Association et al v Canada (Minister of Fisheries and Oceans)*, (1995), 189 NR 220 at 222 (FCA)). The Federal Court of Appeal has further held that “[w]aiting for reasons is not an acceptable excuse for failure to file an application in time” (*Canada (Attorney General) v Trust Business Systems*, 2007 FCA 89 at para 27).⁹

[18] Therefore, I find that the Commission proves the contents and the timing of its call with the Appellant on September 28, 2023, because these details are clearly documented in contemporaneous records in the appeal file.¹⁰

The Appellant claims that she only received the Commission’s Letter much later

[19] The Appellant claims that she only received the Commission’s letter containing the Notice of Decision on October 19, 2023. This is 21 days after the date of the letter.

⁸ See page GD3-39 of the appeal record.

⁹ See *R & S Industries INC v Minister of National Revenue*, 1016 FC 275, [35].

¹⁰ See pages GD3-39 to GD3-41 of the appeal record.

[20] But the regulations deal with when a decision was communicated, not when a letter actually arrived or when Appellant went to their mailbox to retrieve the mail.

[21] In this case, the question of when the Appellant received the Commission's letter is irrelevant. This is because the Commission's decision had already been communicated to her by telephone on September 28, 2023.

When did the Appellant submit her Notice of Appeal to the Tribunal?

[22] The Appellant emailed her Notice of Appeal Tribunal at 5:31 pm in the afternoon on Friday November 17, 2023. This is after the Tribunal Registry had closed for the weekend. The Social Security Tribunal Rules of Procedure say that "a document is considered filed on the date the Tribunal receives it."¹¹ The Tribunal received and processed the Appellant's Notice of Appeal on November 21, 2023. So, this is the date I will use.

How many days was there between the Commission's decision being communicated to the Appellant and when she submitted her Notice of Appeal to the Tribunal?

[23] There are 54 days between the date on which the Commission communicated its decision to the Appellant and when the Tribunal received her Notice of Appeal.

[24] Even if the Appellant were to argue that there was specific information that she needed in the letter that was not communicated to her in the telephone call on September 28, 2023, this would not help her case. The Tribunal allows ten days for Canada Post to deliver a letter anywhere in Canada. So, in this case, the time span in question would be reduced to 44 days.

[25] But both of these dates are beyond the 30 day statutory deadline.

[26] I don't have to decide on a specific date to find that the appeal is late. This is because all of these possible dates are more than 30 days from November 21, 2023,

¹¹ See Section 19(2) of the *Social Security Rules of Procedure (Rules)*

when the Appellant appealed to the Tribunal. No evidence points to a possible date that is less than 30 days from that. This means that the Appellant's appeal is late.

The Appellant doesn't have a reasonable explanation

[27] I find that the Appellant didn't give any explanation whatsoever for why her appeal is late. In fact, despite having received three letters from the Tribunal asking her to provide a reasonable explanation why her appeal was late, she never addressed the question.

[28] The Tribunal sent the Appellant letters on:

- December 19, 2023, asking her to "explain why the appeal is late (e.g. is there a reasonable explanation for the delay)"¹²
- January 19, 2024, explaining to her that the Tribunal was still processing her Notice of Appeal because it appeared to be more than 30 days after her reconsideration decision. The Appellant was directed to the block on the Notice of Appeal form where it said that she **must** explain her delay.¹³
- The January 19, 2024, letter also indicated that "Because of a possible misunderstanding of the procedure, I will extend the deadline for you to submit an explanation as to why your Notice of Appeal to the General Division Employment Insurance Section was submitted after the thirty day deadline. Your deadline is extended to January 26, 2024."¹⁴
- On February 6, 2024, discussing the statutory time limit for making an appeal to the Tribunal as laid out in Section 52(1) of the *Department of Employment and Social Development Act*. Section 52(1) of the *Act* was quoted which includes the phrase "30 days after the day on which it (the Notice of Decision) has been communicated to the Appellant. Again, the Tribunal drew the Appellant's attention to the requirement for her to explain why her appeal to the Tribunal was late. This letter ended with "Please explain to the Tribunal why your Notice of Appeal is late and also tell us why your explanation is reasonable."¹⁵

¹² See document GD5 of the appeal record.

¹³ See document GD8 of the appeal record.

¹⁴ See document GD8 of the appeal record.

¹⁵ See document GD10 of the appeal record.

[29] Despite several opportunities to provide a reasonable explanation to Tribunal why her Notice of Appeal to the Tribunal was late, the Appellant refused to address the issue. Instead, she continued to contest the Commission's decision as well as the Tribunal's math on the 30-day timeframe.

Conclusion

[30] The Appellant didn't give any explanation for why her appeal is late. Because of this, I can't give the Appellant more time to appeal.

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

Jean Yves Bastien

Member, General Division – Employment Insurance Section