



Citation: *JW v Canada Employment Insurance Commission*, 2025 SST 52

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: J. W.

Respondent: Canada Employment Insurance Commission
Representative: D. Kopitas

Decision under appeal: General Division decision dated September 10, 2024
(GE-24-2856)

Tribunal member: Janet Lew

Type of hearing: Videoconference

Hearing date: January 7, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: January 23, 2025

File number: AD-24-669

Decision

[1] The appeal is dismissed. The General Division did not make a procedural error or give any inaccurate or misleading information to the Appellant, J. W. (Claimant).

Overview

[2] The Claimant is appealing the General Division decision.

[3] The General Division found that the Claimant did not reasonably explain why she was late when she filed a notice of appeal at the General Division. For that reason, the General Division did not give her an extension of time to appeal.

[4] The Claimant argues that the General Division acted unfairly, in that it was unclear about what it required from her. She also argues that the whole process itself was unfair and confusing from the outset. She is asking the Appeal Division to be lenient in her case, as she acted in good faith throughout and says that was just four days late—including two weekend days—when she filed her notice of appeal. She asks the Appeal Division to allow her appeal and to consider the underlying merits of her claim. Otherwise, she will be left with a substantial debt.

[5] The Respondent, the Canada Employment Insurance Commission (Commission), argues that the General Division did not make any errors. The Commission asks the Appeal Division to dismiss the appeal.

Issue

[6] Did the General Division act unfairly or make any procedural errors?

Analysis

[7] The Appeal Division may intervene in General Division decisions if the General Division made any jurisdictional, procedural, legal, or certain types of factual errors.¹

The Claimant argues that the General Division acted unfairly

– General background facts

[8] The Commission issued a Notice of Decision (the reconsideration decision) on or about May 31, 2024. The Commission determined that it would not pay the Claimant Employment Insurance benefits from July 6, 2020, to November 27, 2020. It determined that the Claimant was self-employed as a co-owner/manager. So, it did not consider her to be unemployed. It asked her to repay the benefits that it had already paid to her.

[9] The Commission wrote:

You have 30 days following the receipt of this letter to appeal a decision to the Social Security Tribunal of Canada.

To learn about the appeal process, visit www.sst-tss.gc.ca/en or call 1-877-227-8577.²

[10] At some point in early July 2024, or thereabouts, the Claimant contacted the Commission for a copy of its reconsideration decision, as she had yet to receive a copy. According to the notice of appeal that she filed with the General Division on August 14, 2024, she did not receive a copy of the reconsideration decision until July 10, 2024.³

[11] The Claimant explained why she was late. She wrote:

I did not [receive] the notice of decision till July. I called in to check in, they said they had mailed it. But I never [received] it and had them resend it again.⁴

[12] The Social Security Tribunal (Tribunal) wrote to the Claimant on August 29, 2024. The Tribunal advised that it appeared that her appeal was late as she had filed

¹ See section 58 (1) of the *Department of Employment and Social Development (DESD) Act*.

² See Notice of Decision, at GD 3-45.

³ See Notice of Appeal - Employment Insurance - General Division, at GD 2-4.

⁴ See Notice of Appeal - Employment Insurance - General Division, at GD 2-6.

her appeal more than 30 days from the date that she had received the reconsideration decision.

[13] The Tribunal noted that the General Division could give more time to appeal. But, before it could do that, it had to be satisfied that the Claimant had a reasonable explanation for being late. This was consistent with the *Social Security Tribunal Rules of Procedure*.⁵

[14] The Tribunal wrote:

The Tribunal member may give more time to appeal if they decide that you have a reasonable explanation for why you are late. You said you received the Commission's reconsideration decision on July 10, 2024. So, you had until August 9, 2024, to file your appeal. You did so on August 14, 2024. Please write to us to explain the delay in filing your appeal.⁶

[15] The Claimant responded by email dated September 9, 2024.⁷ She wrote:

The reason my appeal was late is due to the decision letter after the investigation was not [received] early enough. I had to contact the department to follow-up with them, they sent another copy by mail to my home address, he just explained to me that I would simply explain the reason for the lateness.

If you have any further questions [I'll] be available to an[sw]er.⁸

[16] The General Division found that the Claimant reasonably explained the first part of the delay in filing her appeal. However, it found that she had not explained the delay from August 9 to August 14, 2024.

[17] As the Claimant had not specifically explained the delay from August 9, 2024, to August 14, 2024, the General Division found that she did not have a reasonable explanation for being late in filing her appeal with the General Division. So, the General

⁵ See section 27 of the *Social Security Tribunal Rules of Procedure*.

⁶ See Tribunal's letter dated August 29, 2024, at GD5.

⁷ See Claimant's response on September 9, 2024, at GD6. The Claimant also attached copies of documents GD2 to GD5 to her response, but none of those documents explained why she had been late when she filed her notice of appeal.

⁸ See Claimant's email dated September 9, 2024, at GD 6-1.

Division determined that it did not have any choice, other than to refuse to extend the time for filing the notice of appeal.

– **The Claimant argues that the General Division did not clearly communicate its requirements**

[18] The Claimant argues that the General Division's letter of August 29, 2024, was unclear and misleading about what it asked of her. She says that it was not evident that the General Division was asking her to explain why she was late between August 9 and August 14, 2024.

[19] The Claimant denies that she was neglectful. She states that she acted as quickly as she could, given her circumstances. She states that there was a combination of factors that caused her to be late: receiving the reconsideration decision well after May 31, 2024, procedural confusion, and what she regarded were challenges in navigating an unfamiliar system during a stressful time.

[20] Because she did not receive the reconsideration decision until July 10, 2024, the Claimant states that she was unsure how the filing deadline was calculated. The Claimant says the Commission should have sent its reconsideration letter by registered mail. That way, she would have had a clear starting point for calculating the 30-day filing period.

[21] The Claimant acknowledges that the May 31, 2024, reconsideration decision stated that she had 30 days within which to file a notice of appeal. Even so, she found that there were inadequate instructions about how any delays in receiving the Commission's reconsideration decision affected the filing timeline. She states that she was unaware that she had to file a notice of appeal by August 9, 2024.

[22] The Claimant states that she was unable to meet the August 9, 2024, filing deadline because, having received the reconsideration decision on July 10, 2024 (later than she had expected to receive it), left her with less time than usual to understand the process. She does not have any legal expertise or experience, so says that she needed additional time to research the process. She also was still dealing with the pandemic's

impact on her, as well as the debt, which significantly added to her stress. All of these considerations affected her ability to act quickly.

[23] The Claimant also argues that the system and process are too rigid. She argues that there should be a short grace period allowed when filing documents with the Social Security Tribunal, similar to what she encounters and also personally gives customers in the retail industry when they are late with returns.

– **The Commission argues that the General Division did not make any procedural errors**

[24] The Commission submits that the General Division did not make any errors when it determined that the Claimant did not provide a reasonable explanation for the delay in filing her appeal after August 9, 2024.

[25] The Commission argues that the General Division clearly told the Claimant what information she had to provide. Specifically, the Commission says the General Division told the Claimant that she had to explain why she had not filed her appeal by August 9, 2024. The Commission argues that the General Division's request and any information it provided to the Claimant were not misleading.

[26] Further, the Commission argues that case law establishes that the mere absence of clear information cannot constitute misleading information.⁹ Additionally, the Commission argues that claimants bear responsibility for looking for the information they need to make informed and timely decisions.¹⁰

– **The General Division did not act unfairly or make any procedural errors**

[27] The General Division did not act unfairly or give any misleading or inaccurate information to the Claimant. The General Division advised the Claimant that her appeal appeared late. It also clearly spelled out what it required from the Claimant.

⁹ See Representations of the Commission to the Social Security Tribunal – Appeal Division, at AD 3-5.

¹⁰ See Representations of the Commission to the Social Security Tribunal – Appeal Division, at AD 3-5, citing *Canada (Attorney General) v Variola*, 2022 FC 1402 at para 27.

[28] The General Division informed the Claimant that she needed to give a reasonable explanation for the delay in filing her notice of appeal after August 9, 2024. The General Division could have been more specific in its letter by asking the Claimant to explain the delay between August 9, 2024, and August 14, 2024. Or the General Division could also have followed up with the Claimant after she responded on September 9, 2024, by asking her to address the delay for the August 9, 2024, and August 14, 2024, timeframe.

[29] However, as it stands, it should have been clear from the August 29, 2024, letter that the General Division had been referring to the timeframe between August 9, 2024, and August 14, 2024. After all, the General Division identified August 9, 2024, as the date when the Claimant should have filed a notice of appeal, and then set out August 14, 2024, as the date when she actually filed her notice of appeal. The General Division wrote, “you had until August 9, 2024, to file your appeal. You did so on August 14, 2024. Please write to us to explain the delay in filing your appeal.”¹¹

[30] Unfortunately for the Claimant, her submissions to the General Division did not address why she did not file an appeal until after August 9, 2024. She explained why she did not file a notice of appeal in June to early July 2024, but she did not explain the delay after August 9, 2024.

[31] The General Division considered whether the Claimant had a reasonable explanation, based on the evidence before it.

– **The Claimant has an explanation for her delay between August 9, 2024, and August 14, 2024**

[32] The Claimant now explains why she was late.¹² She felt that there was insufficient time to understand the process and to file an appeal. She lacked legal expertise and was unfamiliar with the process. There were emotional and practical challenges for her.

¹¹ See Tribunal's letter dated August 29, 2024, at GD5.

¹² See Claimant's email dated December 22, 2024, at AD 7-2.

[33] The Claimant says that she intended to comply with any filing requirements. She states that she had a continuing intention throughout to pursue an appeal. But there were a lot of documents to review. She wanted to ensure that she was accurate with her responses. So she took more time to be “extra thorough.”

[34] However, the General Division did not have any of this evidence before it. Generally, the Appeal Division does not accept new evidence. As the Federal Court of Appeal said in a case called *Gittens*:¹³

[13] ... Under the rules set by Parliament, hearings before the Appeal Division are not redos based on updated evidence of the hearing before the General Division. They are instead reviews of General Division decisions based on the same evidence.

[35] The Court of Appeal set out the circumstances when the Appeal Division may allow new evidence. Evidence can be considered when it provides general background information, shows procedural defects, or exceptionally, in cases where both parties agree that an important document should be considered. Those circumstances do not exist here.

[36] New evidence is not permitted to bolster a party’s case, particularly when that party could have produced that evidence before. The Claimant has not shown why this new evidence should be accepted under any of the exceptions. I am unable to rely on new evidence that the General Division did not have.

– **The length of the delay is irrelevant**

[37] The Claimant’s delay was not that long. The Claimant notes that in other cases, claimants received extensions of time to file their appeals, despite being late by close to a year. As she was late by mere days, she says it is unfair that she does not get an extension too.

¹³ See *Gittens v Canada (Attorney General)*, 2019, FCA 256 at para 13. The Federal Court recently confirmed this in *Naqvi v Canada (Attorney General)*, 2024 FC 2038 at para 13.

[38] The *Department of Employment and Social Development Act* allows for extensions, as long as a claimant did not file their appeal more than a year after the day on which the decision was communicated to them.¹⁴

[39] Extensions are not granted based on the length of the delay. The *Social Security Tribunal Rules of Procedure* make it clear that a claimant has to give a reasonable explanation for their delay.¹⁵

[40] And, as the Commission notes, the Federal Court of Appeal has also said that the length of the delay is irrelevant, and that it is the reasons for the delay that have to be considered.¹⁶

– **Claimants bear some responsibility to find out what their obligations are**

[41] The Claimant argues that the whole process was unfair from the outset. She says decisions should be sent by registered mail so that there is a definitive date by which to calculate the 30-day filing deadline. She also says the Commission could have been clearer about when she had to file a notice of appeal.

[42] I am not suggesting that the Commission made any errors, but even if it had, I do not have any authority to address any procedural shortcomings that might have existed at the Commission's level.

[43] But it is clear from the case law that claimants have to bear some responsibility to find out their obligations, even if the Commission sends its decisions by regular mail and does not provide the exact day on which a claimant has to file an appeal.

[44] As the Federal Court stated in a case called *Karval*,

[14] ... it cannot fairly be said that [Ms. Karval's] clear choices resulted from being misled by the Commission. It is undoubtedly the case that many government benefit programs will have complex features and strict eligibility

¹⁴ See section 52 of the *Department of Employment and Social Development Act*.

¹⁵ See section 27 of the *Social Security Tribunal Rules of Procedure*.

¹⁶ See Commission's oral submissions, at approximately 12:20 of the Appeal Division hearing, citing *McBride v Canada (Attorney General)*, 2009 FCA 1 at para 6. That case dealt with the claimant's delay and whether he backdate his initial claim for benefits.

requirements. More information, clearer language and better explanations can almost always be proposed in hindsight. ... where a claimant like Ms. Karval is not misled but merely lacks the knowledge necessary to answer unambiguous questions, no legal remedies are available. Fundamentally, it is the responsibility of a claimant to carefully read and attempt to understand their entitlement options and, if still in doubt, to ask the necessary questions.¹⁷

[45] It is unclear why the Claimant might have believed the 30-day filing deadline had been relaxed and did not apply in her case, even if the Commission did not send the reconsideration decision to her by registered mail nor set down August 9, 2024, as a set filing deadline.

[46] The Commission's letter of May 31, 2024, clearly states that the Claimant had 30 days from receipt of the letter to appeal a decision.

[47] It is not reasonable to expect the Commission to set a definitive filing deadline, as the deadline is based on when a claimant receives the reconsideration decision. The Commission cannot be expected to know when a claimant might receive the reconsideration decision. Claimants are best placed to calculate the filing deadline, as they would simply calculate 30 days from the date that they received the reconsideration decision.

The overpayment and the Claimant's options

[48] The Claimant has a substantial overpayment to repay. The debt is causing her enormous financial stress.

[49] I do not have any authority to waive or reduce any of the overpayment. But the Claimant can contact the Canada Revenue Agency at the telephone number listed on the Statement of Account (1-866-864-5823) to seek relief or ask about any repayment options.

[50] The Claimant can also write to the Commission and ask to possibly have the debt written off. She would have to specify why she is asking for a write-off. She

¹⁷ See *Karval v Canada (Attorney General)*, 2021 FC 395 at para 14.

suggests that she is facing financial hardship, but she would have to show this. The Canada Revenue Agency would review the Claimant's circumstances and then make a recommendation to the Commission.

Conclusion

[51] The appeal is dismissed. The General Division did not act unfairly or do anything that was procedurally unfair to the Claimant.

Janet Lew
Member, Appeal Division