



Citation: *MS v Canada Employment Insurance Commission*, 2025 SST 492

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

## **Decision**

**Appellant:** M. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (664673) dated May 28, 2024 (issued by Service Canada)

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**Tribunal member:** Barbara Hicks

**Decision date:** January 27, 2025

**File number:** GE-24-4127

## 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 dated April 4, 2024.<sup>1</sup> The Appellant asked the Commission to reconsider.

[3] The Commission reconsidered and sent the Appellant a letter about its reconsideration decision on May 28, 2024.<sup>2</sup> The Appellant had 30 days from the date that he received that decision to file an appeal with the Social Security Tribunal (SST).

[4] Instead of appealing the reconsideration decision to the SST, the Appellant asked the Commission to reconsider its decision again. The Appellant's second request for reconsideration is dated August 26, 2024.<sup>3</sup>

[5] The Commission refused to reconsider the decision again, saying that a reconsideration decision had already been issued and the criteria set out in section 111 of the *Employment Insurance Act* (Act) to cancel or modify the decision weren't met.<sup>4</sup>

[6] There is a deadline for appealing to the Tribunal. An appellant who appeals late must explain why they are late.<sup>5</sup> The Tribunal will give more time to appeal if the appellant has a reasonable explanation for why they are late.<sup>6</sup>

[7] The Appellant didn't file his appeal with the SST until December 24, 2024.<sup>7</sup> He didn't provide a reasonable explanation for why the appeal was filed late.

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<sup>1</sup> See GD3-32.

<sup>2</sup> See GD3-44.

<sup>3</sup> See GD3-45.

<sup>4</sup> See GD3-50.

<sup>5</sup> See section 27(1) of the *Social Security Tribunal Rules of Procedure* (Rules).

<sup>6</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>7</sup> See GD2.

## Issue

[8] I must 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?

## Analysis

[9] If an appellant disagrees with the Commission's reconsideration decision, they can appeal to the Tribunal.<sup>8</sup> They must appeal within 30 days after the Commission told them about the decision.<sup>9</sup>

[10] If the appellant appeals after the deadline, the Tribunal can give them more time to appeal.<sup>10</sup> But the appellant needs to have a reasonable explanation for why they are late.<sup>11</sup>

[11] The Commission sent the Appellant a Notice of Decision that contains the following statement:

*"You have 30 days following the receipt of this letter to appeal a decision to the Social Security Tribunal of Canada."*<sup>12</sup>

[12] The Appellant disagreed with the reconsideration decision, so he asked the Commission to reconsider again instead of appealing to the SST.<sup>13</sup>

[13] On November 7, 2024, the Commission wrote to the Appellant to advise that the Commission couldn't conduct another reconsideration because a reconsideration decision had already been made on the same issue on May 28, 2024 and the criteria under section 111 of the Act hadn't been met that would allow the Commission to

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<sup>8</sup> See section 113 of the *Employment Insurance Act*.

<sup>9</sup> See section 52(1)(a) of the DESD Act.

<sup>10</sup> See section 52(2) of the DESD Act.

<sup>11</sup> See section 27 of the Rules.

<sup>12</sup> See GD3-44.

<sup>13</sup> See GD3-45.

cancel or modify the decision.<sup>14</sup> The Commission says there was no new information provided that contradicted the previous finding of misconduct or suggesting that the reason for separation should be changed to voluntary leaving.<sup>15</sup>

[14] The criteria in section 111 of the Act includes if new facts are presented or if the Commission is satisfied that the decision was given without knowledge of, or was based on, a mistake as to some material fact.<sup>16</sup>

[15] The Appellant didn't provide a date for when he received the Commission's decision but says it was verbally communicated to him on August 4, 2024.<sup>17</sup>

[16] Even though this date (August 4, 2024) doesn't fit with the timeline of the date of the Commission's reconsideration decision, which was May 28, 2024, or even the last date the parties communicated with each other, which was also in May, I will give the Appellant the benefit of the doubt and accept this date. Using this date, the Appellant had to file his appeal with the SST by September 3, 2024.

[17] The Appellant filed his appeal on December 24, 2024.<sup>18</sup> This means the Appellant filed his appeal over three months late.<sup>19</sup>

[18] On January 10, 2025, the Tribunal sent the Appellant a letter asking him to provide the reasons why his appeal was filed late.<sup>20</sup>

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<sup>14</sup> See GD3-50 and GD4-5.

<sup>15</sup> See GD4-5.

<sup>16</sup> In his Notice of Appeal, the Appellant states that there are new facts about a change to the Record of Employment and a settlement reached with the employer however those facts were provided to the Commission by telephone on November 6, 2024. See GD3-49. The Commission determined that the Appellant had been dismissed due to his own misconduct (See GD4-4 to GD4-5) and any subsequent change to the Record of Employment or a settlement reached between the Appellant and the employer is not dispositive of the Commission's determination that the Appellant had been dismissed for misconduct. See *Canada (Attorney General) v Morris*, A-291-98, leave to SCC refused, [1999] SCCA No 304; *Canada (Attorney General) v Boulton*, A-45-96 (FCA); *Canada (Attorney General) v Perusse*, A-309-81 (FCA).

<sup>17</sup> See GD3-45.

<sup>18</sup> See GD2.

<sup>19</sup> September 3, 2024 to\*December 24, 2024 is 112 days.

<sup>20</sup> See GD6.

[19] The Appellant responded on January 14, 2025, and said that he was appealing the letter dated November 7, 2024, which he didn't receive promptly because of the Canada Post labour disruption.<sup>21</sup>

[20] There is no appeal route to the SST of the letter the Appellant received dated November 7, 2024. In fact, in the Commission's letter, it restates that any appeal to the SST must be done within the terms of the notice of decision that was sent to the Appellant on May 28, 2024.<sup>22</sup>

[21] Although the Tribunal acknowledges that there was a Canada Post labour disruption from November 15, 2024 to December 17, 2024, the Appellant should have already filed his appeal by then. Furthermore, the Appellant didn't provide any explanation about why his appeal wasn't filed in time, being by September 3, 2024.

[22] Based on the foregoing, I find that the Appellant's appeal is late and he hasn't provided any reasonable explanation for why it was filed late.

## **Conclusion**

[23] 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.

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

Barbara Hicks

Member, General Division – Employment Insurance Section

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<sup>21</sup> See GD7.

<sup>22</sup> See GD3-50.