



Citation: *SK v Canada Employment Insurance Commission*, 2025 SST 699

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** S. K.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Isabelle Thiffault

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**Decision under appeal:** General Division decision dated March 11, 2025  
(GE-25-463)

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**Tribunal member:** Janet Lew

**Type of hearing:** Videoconference

**Hearing date:** June 27, 2025

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** June 30, 2025

**File number:** AD-25-260

## Decision

[1] The appeal is allowed. The General Division did not address one of the Claimant's primary arguments and it overlooked some of the evidence. I am returning this matter to the General Division for reconsideration.

## Overview

[2] The Appellant, S. K. (Claimant), is appealing the General Division decision.

[3] The Claimant applied for Employment Insurance benefits on September 11, 2024. He wanted to have his application treated as though he had made it earlier, on June 9, 2024.

[4] The General Division determined that the Claimant had to show good cause for his delay in applying for benefits, for the entire period of the delay, in order for it to be able to treat the application as if the Claimant had made it earlier than he had.

[5] However, the General Division found that the Claimant had not shown good cause for his delay in applying for benefits. It found that he had not given an explanation that the law accepts. As a result, the General Division concluded that the Claimant's application could not be treated as though he had made it earlier than he had.

[6] The Claimant argues that he had good cause for the delay. In particular, he states that he had exceptional circumstances to explain his delay. He had "medical caregiving responsibilities." He had to look after his daughter and wife. So, he argues that he acted as a reasonable and prudent person would have acted in his circumstances by looking after his daughter. He argues that the General Division made legal and factual errors by failing to consider his circumstances and by failing to accept that he had good cause for the delay.

[7] The Claimant argues that the Appeal Division should allow his appeal and find that he had good cause for the delay. And, because of this, he says his application

should be treated as if he had made it on June 9, 2024. He says that there is enough evidence on the record to show that he had to care for his family.

[8] The Respondent, the Canada Employment Insurance Commission (Commission), agrees with the Claimant that the General Division made an error. The Commission submits that the General Division did not explain why it did not consider the Claimant's family circumstances as an exceptional circumstance throughout the period of the delay, from June 9, 2024, to September 11, 2024.

[9] However, the Commission argues that the appropriate remedy is to return the matter to the General Division for reconsideration. The Commission argues that there was little evidence of the Claimant's family circumstances and that the record is incomplete and ambiguous.

[10] The Commission also argues that the Appeal Division generally is unable to consider any new evidence. While there are exceptions to this general rule, the Commission argues that they do not arise in this case.

## **Issue**

[11] As the Commission agrees that the General Division made an error, the only outstanding issue is determining how I should fix that error.

## **Analysis**

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

[13] For these types of factual errors, the General Division had to have based its decision on that error, and it had to have made the error in a perverse or capricious manner, or without regard for the evidence before it.<sup>2</sup>

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

<sup>2</sup> See section 58(1)(c) of the DESD Act.

### **The General Division did not address the Claimant's arguments, and it overlooked some of the evidence**

[14] The General Division did not address the Claimant's arguments, and it overlooked some of the evidence.

[15] The Claimant argued at the General Division that he had exceptional circumstances, in part, because he had to care for his daughter and his disabled wife. The General Division noted this evidence and the Claimant's arguments.

[16] However, it does not appear that the General Division considered the Claimant's family circumstances when it analyzed whether the Claimant had good cause for his delay. As the Commission states, the General Division should have explained why it did not give any weight to this issue or to any evidence regarding the Claimant's family circumstances when it considered whether the Claimant had good cause. This represents an error of law, as well as an erroneous finding of fact made without regard for all the material.

### **Fixing the error**

[17] The Appeal Division can either give the decision that the General Division should have given or it can return the matter to the General Division for reconsideration.

[18] The Claimant argues that the evidence shows that he was the primary caregiver and that his wife and daughter required his care and attention, such that he was unable to make an application until September 2024. He relies on the following:<sup>3</sup>

- Notice of Appeal (GD2-6) – The Claimant wrote that he had family responsibilities and was caring for an ill family member.
- Reconsideration file (GD3-36) - Supplementary Record of Claim indicates that the Claimant reported that he quit his employment to care for someone who was ill. He stated that he was the primary caregiver for his 11-year-old daughter. No one was helping him and there was no family

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<sup>3</sup> See Claimant's arguments at AD6 and AD7.

support in Ontario, so the family relocated. He stated that his wife's illness was getting more severe and that he chose to move to be close to her family. He stated that he had to pick up his daughter from school. He stated that he was also helping his child settle in taking both his child and wife to various interviews.

- GD5-3 - Claimant stated that he is the primary giver for his family.
- GD6-2 - During a telephone call with Service Canada, the Claimant reported that he was continuing to provide primary care for his wife who is disabled and his 11-year-old daughter who has significant health conditions.
- Supplementary Representations of the Commission to the Social Security Tribunal (GD7-2) - The Commission noted that the Claimant had reported that he was providing care for his wife and daughter.
- General Division decision (AD1A-7 at paragraph 24) - The General Division noted the Claimant's evidence that he had moved provinces and that his 11-year-old daughter and a disabled wife relied on him for care. Settling his family included finding medical care for his wife.

[19] The Claimant also described his daughter's medical condition and the type of care that he provided to his daughter.<sup>4</sup> He says that this showed that because he was so preoccupied with caring for his family, he was necessarily delayed in being able to apply for benefits at the earlier date.

[20] The Commission argues that this evidence is insufficient and that the record remains incomplete and ambiguous.

[21] The Commission also argues that the evidence regarding the Claimant's daughter's medical condition and the type of care that the Claimant provided to his

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<sup>4</sup> See Application to the Appeal Division - Employment Insurance, at AD1-8 to 9.

daughter represents new evidence that the Appeal Division cannot accept. While there are exceptions to the general rule that the Appeal Division cannot consider new evidence, the Commission argues that those do not exist here.

[22] While some of the evidence that the Claimant provided in his Application to the Appeal Division could help to show that he had good cause for his delay, it represents new evidence that I am unable to consider. Exceptionally, the Appeal Division may consider new evidence, but those circumstances do not exist here.<sup>5</sup>

[23] By returning this matter, the General Division can fully explore the Claimant's family circumstances involving both his wife and children. This could include determining the nature and extent of care that the Claimant gave his family, as it could show how and why the Claimant was unable to make an application at an earlier date. The Claimant may file additional documents, such as medical or other records, to support his claim. He can also call witnesses, if any.

## **Conclusion**

[24] The appeal is allowed. The General Division did not address one of the Claimant's primary arguments that he had good cause for the delay due to family circumstances. It overlooked this evidence in its analysis, yet could have had some impact on the outcome.

[25] I am returning this matter to the General Division for reconsideration so that it can consider and examine the issue regarding the Claimant's family circumstances as it relates to whether he had good cause for his delay.

Janet Lew  
Member, Appeal Division

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<sup>5</sup> See *Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 13.