



Citation: *AD v Canada Employment Insurance Commission*, 2025 SST 1326

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. D.

Respondent: Canada Employment Insurance Commission
Representative: Brian Legault

Decision under appeal: General Division decision dated September 4, 2025
(GE-25-2208)

Tribunal member: Solange Losier

Type of hearing: Teleconference

Hearing dated: December 5, 2025 & December 8, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: December 12, 2025

File number: AD-25-619

Decision

[1] A. D.'s appeal is allowed. The General Division made a legal error because it didn't apply the law and establish when and how the reconsideration decision was communicated to him.

[2] I am substituting it with my own decision. The reconsideration decision was verbally communicated to him on March 21, 2025. His appeal was filed to the General Division on July 29, 2025, so it was more than 30 days late. But he gave a reasonable explanation for the delay, so I am giving him an extension of time.

[3] The file will now return to the General Division for reconsideration to decide whether the Claimant was available for work as set out in the reconsideration decision dated March 21, 2025.

Overview

[4] A. D. is the Claimant, and he applied for Employment Insurance benefits when he stopped working. The Canada Employment Insurance Commission (Commission) decided that the Claimant wasn't entitled to get benefits from December 23, 2024, because he hadn't proven his availability for work.¹

[5] The General Division decided that the Claimant's appeal was filed more than 30 days late. It found that he had failed to provide a reasonable explanation and refused to give him an extension of time.

[6] The Claimant argues that the General Division made a legal error, an important factual error and didn't follow a fair process. The Commission agrees that the General Division made a legal error.

¹ See Commission's initial and reconsideration decision at pages GD3-16 and GD3-24.

[7] I have found that the General Division made a legal error. It didn't establish when and how the Commission's reconsideration decision was communicated to the Claimant before concluding that it was made late.

Preliminary matters

This matter was heard on two separate dates

[8] This matter was scheduled to be heard on December 5, 2025, for 90 minutes.² The parties needed more time to present their cases, so a continuation was held on December 8, 2025, for approximately 45 minutes and concluded on this date.³

A document was added to the file record, and another document was removed

[9] At the Appeal Division hearing, the parties identified that a letter dated August 25, 2025, was missing from the file record and not reflected in the Tribunal's "list of documents." The parties agreed that this letter was relevant because it was before the General Division and asked the Claimant for more information about his late appeal.

[10] The parties also noted that another letter marked as "GD5" dated August 18, 2025, was not part of the file record before the General Division and should be removed because it was never sent to the parties.⁴

[11] As a result, I added the August 25, 2025, letter to the file record, and it was shared with the parties shortly before the second hearing date took place (marked as "AD7").⁵ I also removed the letter marked as "GD5" from the file record. An updated list of documents was sent to the parties and both confirmed receipt at the Appeal Division hearing on December 8, 2025.

² See pages AD0-1 to AD0-3.

³ See pages AD0A-1 to AD0A-2.

⁴ I reviewed the file record, and it seems that the August 18, 2025, letter marked as GD5 was generated but not sent to the parties. This is consistent with what the parties told me as well.

⁵ See pages AD7-1 to AD7-3

The Claimant gave new evidence about the communication date

[12] New evidence is evidence that the General Division didn't have before it when it made its decision. The Appeal Division generally doesn't accept new evidence.⁶ This is because the Appeal Division isn't the fact finder or rehearing the case. It's a review of the General Division's decision based on the same evidence.⁷ There are some exceptions to this, such as "general background information."⁸

[13] At the Appeal Division hearing, the Claimant argued that the Commission's written reconsideration decision dated March 21, 2025, was not "received" on this date. He says it arrived in mid to late April 2025. I asked the parties if this was new evidence.

[14] The parties agree and I accept that this is new evidence because it wasn't before the General Division. The Commission wasn't opposed to allowing the new evidence and noted that it might fit under the exception of general background information. The Commission submits that the new evidence wouldn't change the outcome anyway.

[15] I am not accepting the Claimant's new evidence about the date the Commission's written reconsideration decision was received because it doesn't fit the general background information exception, or any of the other exceptions to new evidence. The evidence he wants to provide is updated evidence in an effort to dispute the communication date.

[16] An appeal to the Appeal Division isn't a "redo" based on updated evidence. Instead, they are reviews of the General Division decision based on the same evidence. This means I can't consider the Claimant's new evidence when making my decision.

⁶ See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraphs 29 and 34; *Parchment v Canada (Attorney General)*, 2017 FC 354 at paragraph 23.

⁷ See *Gittens v Canada (Attorney General)*, 2019 FCA 256 at paragraph 13.

⁸ See *Sharma v Canada (Attorney General)*, 2018 FCA 48 and *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraphs 37–39.

Issue

[17] Did the General Division make a legal error by not deciding when and how the Commission's reconsideration decision was communicated to the Claimant? If so, how should the error be fixed?

Analysis

[18] The law says that a person has to appeal the Commission's reconsideration decision no more than 30 days after the Commission has communicated its decision to them.⁹ The Commission has to show that its reconsideration decision was communicated to the person.

[19] When an appeal is filed late, the General Division can extend the time if the person gives a reasonable explanation for filing it late.¹⁰ But in no case may an appeal be brought more than one year after the day on which it was communicated to them.¹¹

The General Division made a legal error

The parties agree that the General Division made a legal error

[20] The parties agree that the General Division made a legal error by not establishing when and how the reconsideration decision was communicated to the Claimant.

[21] In its decision, the General Division wrote, "I accept that the Commission told the Appellant about its reconsideration decision more than 30 days before he appealed to the Tribunal."¹²

⁹ See section 52(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).

¹⁰ See section 27(2) of the *Social Security Tribunal Rules of Procedure* (SST Rules) and 52(2) of the DESD Act.

¹¹ See section 52(2) of the DESD Act.

¹² See paragraph 13 of the General Division decision.

[22] The General Division made no findings on *when* or *how* the Commission's reconsideration decision was communicated to the Claimant. It didn't explain with reasons why it accepted that the appeal was more than 30 days late.

[23] The General Division was required to establish a communication date and explain with reasons with reference to the relevant evidence. So, it isn't enough to broadly say that the reconsideration decision was communicated, "more than 30 days before he appealed." It should identify the date the reconsideration decision was communicated to the Claimant and the manner it was communicated (i.e., by mail, verbally, or other means, etc.).

[24] I find that the General Division made a legal error because it didn't apply the law and decide when and how the reconsideration decision was communicated to the Claimant.¹³ And it didn't explain with reasons why his appeal was more than 30 days late.

Fixing the error

Return to the General Division for reconsideration or give the decision the General Division should have given

[25] There are two options for fixing an error made by the General Division.¹⁴ I can either send the file back to the General Division for reconsideration or give the decision that the General Division should have given (this is also called substituting). In doing so, I can make any necessary factual findings.¹⁵

[26] The Claimant says that I should substitute with my own decision because it is the "faster option." He restated that his appeal to the General Division wasn't late, and that even if it was, then he had a reasonable explanation for the delay. He also wants me to decide that he is entitled to benefits.

¹³ See section 52(2) of the DESD Act.

¹⁴ See section 59(1) of the DESD Act.

¹⁵ See section 64 of the DESD Act.

[27] The Commission says that I should substitute with my own decision. It says that the record is complete.

[28] The Commission argues that the Claimant's appeal was made late and he failed to provide a reasonable explanation for the delay, so the appeal shouldn't proceed.

[29] I will substitute with my own decision. I am satisfied that the parties got a full and fair opportunity to present their cases before the General Division and that the record is complete on the late appeal issue.

The Claimant's appeal to the General Division was late, but he had a reasonable explanation, so I am giving him an extension

[30] I find that the Commission's reconsideration decision was communicated to the Claimant verbally on March 21, 2025.

[31] I am relying on the following evidence. The evidence shows that the Commission verbally communicated the reconsideration decision to the Claimant on March 21, 2025, during a telephone conversation, which included his appeal rights to the Tribunal.¹⁶ A copy of the written decision followed by mail and was sent to the Claimant's current mailing address which also outlined his appeal rights.¹⁷ The Claimant also identified in his appeal forms to the General Division as having "received" the decision on March 21, 2025.¹⁸

[32] I find that the Claimant filed his appeal to the General Division on July 29, 2025.¹⁹ The evidence shows that he sent his appeal to the Tribunal via email, and it was considered filed on the date that the Tribunal received it.²⁰ The period from March 22, 2025, to July 29, 2025, is 129 days.²¹

¹⁶ See page GD3-23.

¹⁷ See page AD1-3. The Claimant provided the same address in his application form to the Appeal Division on October 2, 2025.

¹⁸ See page GD2-4.

¹⁹ See pages GD2-1 to GD2-9.

²⁰ See section 19(2) of the SST Rules.

²¹ This doesn't include the end date, July 29, 2025, when he filed his appeal.

[33] I find that the Claimant's appeal to the General Division on July 29, 2025, was made late. It was more than 30 days late, but less than one year based on the communication date.

[34] I now have to decide whether he had a reasonable explanation for the delay in filing his appeal to the General Division and whether to give him an extension of time to appeal.²²

[35] The evidence shows that the Claimant works as a teacher on an on-call basis. He didn't appeal the Commission's decision about his availability for work for the two week 2024 Christmas holiday period because he didn't know that it would affect his 2025 summer claim for benefits. It was only when he found out that his 2025 summer renewal claim would be affected that he acted promptly and filed an appeal to the General Division on July 29, 2025.

[36] I find that the Claimant gave a reasonable explanation for the delay in filing his appeal to the General Division. A person filing a late appeal to the Tribunal doesn't have to give a "perfect" explanation for the delay in appealing, but only a reasonable explanation. This isn't a "high bar" in my view.

[37] The Claimant in this case wasn't aware that once he established a benefit period in December 2024, and a disentitlement to benefits was imposed, that it would affect his 2025 summer renewal claim. While the Claimant could have made inquiries about the effect of the Commission's reconsideration decision, he simply didn't know to ask about the impact of their decision. When he was told by the Commission that his summer benefits would be impacted, he appealed it to the General Division promptly.²³

[38] The Claimant has provided a reasonable explanation for the delay in filing his appeal to the General Division, so I am giving him more time to file his appeal. My decision doesn't mean that the Claimant is entitled to get benefits, but it means that he

²² See section 27(2) of the SST Rules.

²³ See page GD6-1.

will now have an opportunity to present his case about his availability for work before the General Division.

Conclusion

[39] The appeal is allowed. The General Division made an error of law. I am substituting with my own decision. The Claimant's appeal was filed late, but he had a reasonable explanation for the delay, so I am giving him more time.

[40] The file will return to the General Division to decide his availability for work as set out in the Commission's reconsideration decision dated March 21, 2025.

Solange Losier
Member, Appeal Division