



[TRANSLATION]

Citation: *Canada Employment Insurance Commission v ML*, 2025 SST 736

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Louis Gravel

Respondent: M. L.

Decision under appeal: General Division decision dated February 5, 2025
(GE-25-19)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference

Hearing date: July 8, 2025

Hearing participants: Appellant's representative
Respondent

Decision date: July 17, 2025

File number: AD-25-179

Decision

[1] The appeal is allowed.

Overview

[2] The Respondent (Claimant) initially applied for Employment Insurance (EI) benefits effective January 22, 2017. She also applied again for EI benefits effective January 21, 2018.

[3] On April 21, 2021, the Appellant (Commission) gave two decisions related to the benefit claims filed in 2017 and 2018. These decisions resulted in \$10,334 being overpaid—\$9,238 in 2017 and \$1,096 in 2018—for the benefit claim effective January 22, 2017. Also, \$6,153 was overpaid for the benefit claim starting January 21, 2018. A \$782 penalty was added to the benefit claim effective January 21, 2018.

[4] On April 13, 2023, the Claimant asked for the two decisions the Commission gave on April 21, 2021, to be reconsidered. She said that she was entitled to benefits because she was unemployed.

[5] On May 10, 2023, after the Claimant asked for a reconsideration, the Commission gave a negative decision. This was on the delay in asking for a reconsideration within the 30 days after the day the initial decision was communicated to her. She was told verbally and in writing that she had the right to appeal to the Social Security Tribunal of Canada (SST).

[6] On August 12, 2024, the Claimant said that she wanted to dispute the percentage of her wages being garnished. She also wanted to challenge the two decisions that resulted in her being overpaid.

[7] On September 12, 2024, the Commission told her that it could not go ahead with this reconsideration request. This is because a decision on the delay in asking for a reconsideration had already been given on May 10, 2023. The criteria in section 111 of

the *Employment Insurance Act* (EI Act) that allow the decision to be rescinded or amended weren't met.

[8] On January 3, 2025, the Claimant appealed to the General Division. It allowed her appeal in part and gave her the right to ask for a reconsideration under section 111 of the EI Act.

[9] Permission to appeal was given to the Commission. It argues that the General Division made an error of law and an error of jurisdiction.

[10] I have to decide whether the General Division made an error of law and an error of jurisdiction.

[11] I am allowing the Commission's appeal.

Issues

[12] **Issue 1:** Did the General Division make an error of law by hearing the appeal of the decision dated May 10, 2023, on the delay?

[13] **Issue 2:** Did the General Division have jurisdiction to hear the Claimant's appeal on the decision the Commission gave under section 111 of the EI Act?

Analysis

Issue 1: Did the General Division make an error of law by hearing the appeal of the decision dated May 10, 2023, on the delay?

[14] In its initial decisions given on April 21, 2021, the Commission accused the Claimant of not reporting her employment income while she was receiving EI benefits.¹

[15] The Claimant was clearly aware of the 2021 decisions resulting in her being overpaid since at least February 2023. This was after a conversation she had with the Canada Revenue Agency since she asked for a reconsideration in April 2023. She alleged that she had made her reports honestly, and that she was entitled to benefits

¹ See GD3-17 to GD3-26.

during the relevant periods because she was unemployed. This challenged the Commission's initial position.

[16] On May 10, 2023, after the Claimant asked for a reconsideration, the Commission gave a negative decision. This was on the delay in asking for a reconsideration within 30 days after the day the initial decision was communicated to her.

[17] The evidence shows that on May 10, 2023, the Claimant was verbally told about the decision on the delay and that she had the right to appeal to the SST. She was also told that the written decision would follow soon. The letter was sent to her usual address—the one listed on her reconsideration request. No mail was returned. She didn't follow up with the Commission, even though the situation was urgent and the verbal notice of the decision was given on May 10, 2023. It was only on January 3, 2025, that she appealed to the Tribunal's General Division.

[18] The law says that the General Division can't, at any time, extend the time to appeal to more than one year after the reconsideration decision is communicated.²

[19] So, the Claimant could have filed a notice of appeal with the General Division about the decision dated May 10, 2023, no later than the end of May 2024. She didn't do this. The notice of appeal was only filed with the General Division on January 3, 2025.

[20] As a result, I am of the view that the General Division made an error of law by hearing the appeal of the decision dated May 10, 2023, on the delay.

² See section 52(2) of the *Department of Employment and Social Development Act*.

Issue 2: Could the General Division hear the Claimant's appeal of the decision the Commission gave under section 111 of the EI Act?

[21] Section 111 of the EI Act allows the Commission to reopen a file if **new facts** are presented to it.³

[22] I am of the view that, in the letter dated September 12, 2024, the Commission gave a decision when it said that the criteria under section 111 of the EI Act—allowing a decision to be rescinded or amended—weren't met. The decision incorrectly said that the Claimant could appeal to the SST the decision given under section 111 of the EI Act.⁴

[23] Rather, the Claimant should have asked the Commission to reconsider the decision related to section 111 of the EI Act—set out in the letter dated September 12, 2024—**before** going to the General Division.⁵

[24] Provisions in the EI Act dealing with rescinding or amending don't allow a claimant to circumvent the requirements of section 113 of the EI Act. The claimant needs to have a reconsideration decision to appeal to the SST.⁶

[25] I am of the view that the General Division didn't have jurisdiction to hear the appeal of the decision the Commission gave on September 12, 2024, under section 111 of the EI Act. This is because that decision wasn't reconsidered under section 112 of the EI Act.

Conclusion

[26] For these reasons, the Commission's appeal should be allowed.

³ The Claimant argued, among other things, that the Commission didn't consider her many health problems in its decision dated September 12, 2024.

⁴ See GD3-41.

⁵ See section 112 of the *Employment Insurance Act*.

⁶ See *KJ v Canada Employment Insurance Commission*, 2021 SST 347.

[27] I recommend that the Claimant **promptly** ask the Commission to reconsider the decision related to section 111 of the EI Act—found in the letter dated September 12, 2024—before going to the General Division, if needed.

[28] I recommend that the Commission, in deciding whether to give more time to ask for a reconsideration, consider the fact that the decision letter dated September 12, 2024, and the Commission's arguments before the General Division didn't tell the Claimant that she had to ask the Commission to reconsider the decision related to section 111 of the EI Act. She was wrongly directed to the SST.⁷

Pierre Lafontaine
Member, Appeal Division

⁷ See GD3-41 and GD4-6.