



[TRANSLATION]

Citation: *XR v Canada Employment Insurance Commission*, 2026 SST 261

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** X. R.  
**Representative:** Me Cindy Langlais, Legal Aid of Québec-Estrie-Thetford

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Audrey Pratte

---

**Decision under appeal:** General Division decision dated  
December 8, 2025 (GE-25-3138)

---

**Tribunal member:** Elsa Kelly-Rhéaume

**Type of hearing:** Videoconference  
**Hearing date:** March 26, 2026  
**Hearing participants:** Appellant  
Appellant's representative  
Respondent  
Respondent's representative

**Decision date:** March 27, 2026  
**File number:** AD-25-820

## Decision

[1] The appeal is allowed. The General Division based its decision on an important error of fact. I gave the decision that should have been given.

[2] The Claimant filed her notice of appeal to the General Division after the deadline. She gave a reasonable explanation for being late. I am giving her more time to file her notice of appeal.

[3] The file returns to the General Division so that the Claimant's appeal of the August 29, 2025, reconsideration decision can be heard.

## Overview

[4] The Claimant applied for Employment Insurance (EI) regular benefits.<sup>1</sup> She started receiving benefits as of January 21, 2024.<sup>2</sup> On November 25, 2024, she called the Canada Employment Insurance Commission (Commission) to ask for sickness benefits instead of regular benefits.<sup>3</sup> She provided a medical certificate saying that she wasn't able to work as of August 9, 2024.<sup>4</sup>

[5] The Commission decided, based on the information provided, that the Claimant hadn't been available for and capable of working since her benefit period started on January 14, 2024.<sup>5</sup> The Commission found that she didn't provide information on 19 occasions. The Claimant wasn't able to work for medical reasons as of August 2024. The Commission told her that her benefits would be changed to sickness benefits as of August 1, 2024. The Commission issued a notice of debt for \$11,142.<sup>6</sup>

---

<sup>1</sup> See the application for benefits at GD3-5.

<sup>2</sup> See the table of benefits paid at GD3-33.

<sup>3</sup> See the notes of a telephone conversation at GD3-24.

<sup>4</sup> See the medical certificate at GD3-37.

<sup>5</sup> See the notice of decision at GD3-28.

<sup>6</sup> See the notice of debt at GD3-30.

[6] The Claimant asked the Commission to reconsider its decision.<sup>7</sup> She said that she wasn't able to work as of January 2025, not January 2024. She was capable of working from January 2024 through August 9, 2024.

[7] The Commission upheld its decision on August 29, 2025.<sup>8</sup>

[8] The Claimant appealed the decision to the General Division on November 17, 2025.<sup>9</sup> It appeared that she appealed late. She said in her notice of appeal that she was late because she had anxiety. She also said that she could not send the notice of appeal on time because Canada Post was on strike.<sup>10</sup>

[9] The General Division didn't give more time to appeal.<sup>11</sup> It found that the Claimant hadn't given a reasonable explanation for being late.

[10] The Claimant is appealing this decision.

## Issues

[11] I will decide the following issues:

- Did the General Division base its decision on an important error of fact when it found that the Commission had emailed its reconsideration decision?
- If so, how should I fix the error?

## Analysis

[12] I can intervene if the General Division made one of the following errors:

- It breached the principles of procedural fairness.

---

<sup>7</sup> See the reconsideration request at GD3-35.

<sup>8</sup> See the notice of decision at GD3-42.

<sup>9</sup> See the notice of decision at GD2-1.

<sup>10</sup> See the notice of decision at GD2-5.

<sup>11</sup> See para 25 of the General Division decision at AD1A-6.

- It made an error of jurisdiction. In other words, it didn't decide an issue that it had to decide, or it decided an issue it didn't have the right to decide.
- It made an error of law.
- It made an important error of fact.<sup>12</sup>

## **The parties agree that the General Division based its decision on an important error of fact**

[13] The General Division bases its decision on an important error of fact when it makes a finding of fact that the evidence doesn't support or that the evidence directly contradicts.<sup>13</sup>

[14] In its decision, the General Division wrote that the Commission emailed the reconsideration decision on August 29, 2025.<sup>14</sup> The General Division didn't refer to any evidence to support this finding.

[15] In its written arguments to the Appeal Division, the Commission acknowledged that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.<sup>15</sup> The Commission said that the General Division made an error when it found that the Claimant received the August 29, 2025, reconsideration decision by email. It said that the email on file asked her to contact the Commission.<sup>16</sup> But no decision was communicated through this email.

[16] At the Appeal Division hearing, the Claimant's lawyer said that she agreed the General Division had made this error.

---

<sup>12</sup> See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>13</sup> See the Federal Court of Appeal decision in *Garvey v Canada (Attorney General)*, 2018 FCA 118 at para 6.

<sup>14</sup> See para 10 of the General Division decision at AD1A-3.

<sup>15</sup> See the Commission's arguments at AD3-4.

<sup>16</sup> See the email dated August 11, 2025, at GD3-41.

[17] I find that the General Division did, in fact, base its decision on an important error of fact. It made a finding of fact, even though the evidence on file didn't allow it to make that finding.

[18] The evidence on file doesn't show that the Claimant was emailed the reconsideration decision. Rather, it shows the opposite. In fact, the notice of decision dated August 29, 2025, is addressed to her mailing address.<sup>17</sup> The notice of decision doesn't say that it was emailed.

[19] There is no evidence on file that the Commission informed the Claimant of the decision verbally either. Service Canada's notes show that the attempts made to contact her weren't successful. The notes say that Service Canada called her on August 11 and 25, 2025, but she didn't answer the calls.<sup>18</sup> The notes also say that her voice mailbox was full. The Commission wasn't able to leave a voice message. These calls were made before the reconsideration decision was given.

[20] As a result, I find that the General Division made a finding of fact that the evidence didn't support. So, I can intervene to fix the error.

## **Remedy**

[21] Since I found that the General Division made an error that the Act allows me to fix, I have to decide how I will fix that error.

[22] The Claimant's lawyer is asking that I return the file for reconsideration. She said that this would allow her to explain why she was late in more detail.

[23] The Commission also wants me to return the file to the General Division for reconsideration.<sup>19</sup> It says that the record is incomplete. The Commission says that a referral back to the General Division would allow the Claimant to explain when she received the decision and, if so, why she was late.

---

<sup>17</sup> See the notice of decision at GD3-42.

<sup>18</sup> See Service Canada's notes at GD3-40.

<sup>19</sup> See the Commission's arguments at AD3-5.

## **Procedural fairness was followed and the record is complete**

[24] In my view, the General Division followed procedural fairness. The Claimant had already given reasons for being late in her notice of appeal. The General Division still gave her another opportunity to explain why she was late. It sent her a letter on November 25, 2025, asking her to explain why she was late.<sup>20</sup> This letter was emailed. When the Tribunal emails a document, the document is considered received on the next business day.<sup>21</sup> So, I can find that she received the email asking for explanations on November 26, 2025. She didn't respond to give additional explanations for why she was late.

[25] So, the Claimant had the opportunity to submit the evidence she wanted before the General Division regarding the issue of her delay.

[26] In addition, the record is complete. The Claimant already said in her notice of appeal that she didn't remember when she received the reconsideration decision.<sup>22</sup> A referral to the General Division isn't an opportunity to supplement her evidence. So, there is no reason to return the file to the General Division.

[27] The Act allows me to give the decision that the General Division should have given.<sup>23</sup> So, I will decide whether the notice of appeal was late and, if so, whether the Claimant gave a reasonable explanation for being late.

## **I am giving the Claimant more time to file the notice of appeal**

### **– The notice of appeal was late**

[28] The Act says that the Claimant had to appeal to the General Division within 30 days after the day the decision was communicated to her.<sup>24</sup>

---

<sup>20</sup> See the letter dated November 25, 2025, at GD5-1. The General Division asked the Claimant for information about her delay in appealing.

<sup>21</sup> See section 22(3) of the *Social Security Tribunal Rules of Procedure* (Rules).

<sup>22</sup> See the notice of appeal at GD2-3.

<sup>23</sup> See section 59(1) of the DESD Act.

<sup>24</sup> See section 52(1)(a) of the DESD Act.

[29] The reconsideration decision was given on August 29, 2025, as shown on the notice of decision.<sup>25</sup> The Claimant doesn't remember when the decision was communicated to her.<sup>26</sup>

[30] The decision was mailed. When the Tribunal sends a document to a party by regular mail, the document is considered received 10 days after the day it was sent.<sup>27</sup> So, if the Commission sent the decision on August 29, 2025, I find that the decision was received 10 days after it was sent, that is, on September 8, 2025.

[31] So, the Claimant had to file her notice of appeal no later than 30 days after September 8, 2025. She should have appealed by October 8, 2025, at the latest.

[32] The Claimant's appeal was late. A document is considered filed on the date the Tribunal receives it.<sup>28</sup> On each document, the Tribunal indicates the date it received the document. The General Division received the Claimant's notice of appeal on November 17, 2025, based on the stamp appearing on the document.<sup>29</sup>

– **The Claimant has a reasonable explanation for being late**

[33] The Claimant's appeal is less than a year late.<sup>30</sup> So, I can give more time if she has a reasonable explanation for being late.<sup>31</sup>

[34] In her notice of appeal, the Claimant explained why she was late. She said that she had been very anxious about the process. It should be noted that she was asked to pay back a significant amount of money. She also said that she lost her father in January 2025, and that it was very painful for her. When she wanted to mail her notice of appeal, Canada Post was on strike.

---

<sup>25</sup> See the notice of decision at GD3-42.

<sup>26</sup> See the notice of appeal at GD2-3. The Claimant checked the box that said the following: [translation] "I don't remember when I received the reconsideration decision."

<sup>27</sup> See section 22(1) of the Rules.

<sup>28</sup> See section 19(2) of the Rules.

<sup>29</sup> See the notice of appeal at GD2.

<sup>30</sup> See section 52(2) of the DESD Act.

<sup>31</sup> See section 27(2) of the Rules.

[35] I note that the General Division seems to have taken judicial notice that Canada Post went on strike at the end of 2025. A court might take judicial notice of facts that are notorious and not subject of debate. The General Division included a link to the Canada Post's website in the evidence on file.<sup>32</sup> The website says that on September 25, 2025, a nationwide strike was called. Canada Post said that this strike would cause delays in service. On October 11, 2025, the Canada Post union started rotating strikes. The website said that this would also cause delays, and that, as of November 21, 2025, strike activities were suspended.

[36] I asked the parties at the Appeal Division hearing if they thought the Claimant had given a reasonable explanation. Her lawyer argued that her explanations were reasonable. The Commission finds that the Claimant didn't give a reasonable explanation for being late.<sup>33</sup>

[37] I find that the Claimant gave a reasonable explanation for being late. Canada Post was on strike as of September 25, 2025. This was before the deadline to file the notice of appeal. The strike ended after she sent her notice of appeal to the General Division. This means that there was a Canada Post strike throughout the entire period of the delay. So, the Canada Post strike reasonably explains the delay of just over a month. As a result, I am giving the Claimant more time to file her notice of appeal.

## **Conclusion**

[38] The appeal is allowed. The General Division based its decision on an important error of fact. I gave the decision that should have been given.

---

<sup>32</sup> See the General Division decision at AD1A-4. The General Division referred to the following website: <https://www.canadapost-postescanada.ca/cpc/en/our-company/news-and-media/corporate-news/negotiations-list.page>.

<sup>33</sup> See section 27(2) of the Rules. I can decide whether the Claimant had a reasonable explanation without asking the Commission for arguments.

[39] The Claimant filed her notice of appeal to the General Division after the deadline. She gave a reasonable explanation for being late. I am giving her more time to file her notice of appeal.

[40] The file returns to the General Division so that the Claimant's appeal of the August 29, 2025, reconsideration decision can be heard.

Elsa Kelly-Rhéaume  
Member, Appeal Division