

[TRANSLATION]

Citation: *K. M. v. Canada Employment Insurance Commission*, 2013 SSTGDEI 6

Appeal No: GE-13-928

BETWEEN:

**K. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**  
**Extension of Time to Appeal**

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SOCIAL SECURITY TRIBUNAL MEMBER: Aline Rouleau

DATE OF DECISION: December 12, 2013

## **DECISION**

[1] The Tribunal allows an extension of time for the Appellant to appeal to the General Division of the Social Security Tribunal.

## **INTRODUCTION**

[2] An Employment Insurance benefit renewal period in the Appellant's name took effect on March 31, 2013. In a decision dated June 4, 2013, the Respondent determined that the Appellant had received an amount that should be allocated under sections 35 and 36 of the *Employment Insurance Regulations* (the Regulations) and, on August 13, 2013, it denied the request for reconsideration. The Appellant filed an application for review to the Commission on September 17, 2013, and was informed on September 19, 2013, that he had to appeal the revised decision rendered on August 13, 2013, which the Appellant stated he received on August 16, 2013, to the Social Security Tribunal. An appeal was finally made to the Appeal Division of the Tribunal on October 4, 2013, beyond the time limit set out in subsection 52(1) of the *Department of Human Resources and Skills Development Act* (DHRSD Act).

## **ISSUE**

[3] The Tribunal must decide whether to allow an extension of time for the Appellant to appeal.

## **APPLICABLE LAW**

[4] Subsection 52(1) of the DHRSD Act states that an appeal of a decision made under the *Employment Insurance Act* must be brought to the General Division of the Tribunal within 30 days after the day the decision is communicated to the Appellant.

[5] Under subsection 52(2) of the DHRSD Act, the General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day the decision is communicated to the Appellant.

[6] The case law sets out certain criteria for assessing the circumstances, enabling the Tribunal to determine whether it will allow or deny the requested extension of time to appeal (*Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883; and *Muckenheim v. Canada (Employment Insurance Commission)* 2008 FCA 249).

[7] These criteria include: 1- The Appellant demonstrates a continuing intention to pursue the appeal; 2- The matter discloses an arguable case; 3- There is a reasonable explanation for the delay; and 4- There is no prejudice to the other party in allowing the extension.

[8] The weight to be given to each of the *Gattellaro* factors may differ in each case, and in some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served – *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

## **EVIDENCE**

[9] The evidence in the docket states that:

- a) The review and appeal procedures were either misunderstood or incorrectly explained. Moreover, the forms that are supposed to serve as guides for these procedures were not used although they were available, or were misused.
- b) On October 10, 2013, the Tribunal informed the Appellant in writing that he had to provide the reasons for his delay in filing his appeal.
- c) On October 23, 2013, the Appellant called the Tribunal for explanations of what he had to do, and on November 6, 2013, the Tribunal received an explanatory letter to which was attached all the documents already provided by the Commission.

## **SUBMISSIONS**

[10] The Appellant submitted that:

- a) His continued intention to pursue his appeal can be seen in all the documents he has provided.
- b) His case is arguable in light of all the errors that occurred with his employer.
- c) In the appeal form, he provided all the correspondence dates and wait times, justifying his delay in filing his appeal.
- d) There would be no prejudice to his employer in any way in allowing the extension because the problem has already been resolved with the employer.

[11] The Commission-Respondent did not present any submissions regarding the Appellant's delay in filing his appeal to the Tribunal.

## **ANALYSIS**

[12] It is important to consider the four factors listed in the case law in *Gatellaro (supra)*. However, it is not necessary that the person applying for an extension of time to appeal meet the four criteria simultaneously. However, the applicant must meet some or at least one, depending on the relative weight and the Tribunal's degree of satisfaction in terms of achieving the desired goal.

[13] With regard to the first ground, that of a continued intention, it is important to properly analyze the facts in the docket. After the Commission rendered its decision on June 4, 2013, the Appellant explained that he had communicated with the Commission to explain his situation and to state that he was waiting for his employer to provide him with an amended Record of Employment (ROE). Having not received any response from his employer on July 18, 2013, he sent an application for review letter on the recommendation of an officer who told him that the Commission could contact the employer. On August 13, 2013, the Commission rendered the revised decision. However, the employer sent the amended ROEs on September 4, 2013. On September 17, 2013, the Appellant appealed from the Commission's revised decision, but he appealed to the wrong tribunal using the wrong form. He was informed of this on September 19 and, on October 4, filed his appeal to the Tribunal, again using the wrong form, which was for the Appeal Division rather than the Tribunal's General Division. Later, there were communications with the Tribunal's operations department, which attempted to guide the Appellant as best it could.

[14] Consequently, under the circumstances, it appears to the Tribunal that the Appellant showed continued intention to pursue his appeal.

[15] With regard to the second criterion to be analyzed, it is not necessary for the Tribunal, at this stage of this interlocutory decision, to rule on the veracity or probative weight of the evidence. It is sufficient, rather, to review the grounds raised and, in this case, if the Appellant demonstrated what he was alleging, the case would be arguable.

[16] With regard to the criterion pertaining to sufficient explanation for the delay, the Tribunal is satisfied with the confusion surrounding the events and procedures.

[17] Lastly, with regard to the fourth criterion concerning prejudice, extending the time to appeal would not cause any prejudice to the Commission, which could make its position on the merits known at the hearing.

### **CONCLUSION**

[18] For these reasons, the Tribunal allows the extension of time within which to bring the appeal before the General Division of the Social Security Tribunal.

A handwritten signature in black ink, appearing to read "Alii Laha", written in a cursive style.

Member, General Division