

Citation: *M. A. A. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 129

Appeal No: GE-14-2502

BETWEEN:

M. A. A.

Appellant
[Claimant]

and

Canada Employment Insurance Commission

Respondent

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

SOCIAL SECURITY TRIBUNAL MEMBER: Eleni Palantzas

DATE OF DECISION: November 5, 2014

DECISION

[1] The Social Security Tribunal of Canada (Tribunal) refuses an extension of time for the Appellant to appeal to the General Division of the Tribunal.

INTRODUCTION

[2] The Appellant applied for employment insurance benefits on March 3, 2009 and benefits were established effective March 8, 2009. On December 12, 2012, the Respondent advised the Appellant of its decision to retroactively allocate unreported earnings to his benefit period and to impose a penalty and issue a notice of violation. On May 15, 2013, some 5 months later, the Appellant requested that the Respondent reconsider its decision.

[3] In a letter dated June 25, 2013, the Respondent stated that it would not reconsider its decision (of December 12, 2012) because he requested the reconsideration more than 30 days past the time the decision was communicated to him.

[4] The Appellant appealed this latter decision of the Respondent to deny his request for a reconsideration on September 25, 2014, which is beyond the time limit set out in subsection 52(1) of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

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

THE LAW

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

[7] Under subsection 52(2) of the DESD 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 decision the decision is communicated to the Appellant.

[8] When deciding whether to allow further time to appeal, the Tribunal must consider and weigh criteria as set out in case law. In *Canada (Minister of Employment and Skills Development) v. Gattellaro*, 2005 FC 883 (see also *Muckenheim v. Canada (Employment Insurance Commission)* 2008 FCA 249), the Federal Court states that the criteria are as follows:

1. The Appellant must demonstrate 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.

[9] 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.

[10] The Federal Court of Appeal has found that the question of whether the respondent has an arguable case at law is akin to determining whether the respondent, legally, has a reasonable chance of success – *Canada (Minister of Employment and Social Development) v Hogervorst*, 2007 FCA 41; *Fancy v Canada (Minister of Employment and Social Development)*, 2010 FCA 63.

EVIDENCE

[11] The Appellant applied for employment insurance benefits on March 3, 2009 and benefits were established effective March 8, 2009.

[12] On December 12, 2012, the Respondent advised the Appellant of its decision to retroactively allocate unreported earnings to his benefit period, which in turn, resulted in

an overpayment of benefits. It also concluded that the Appellant made 20 false representations and therefore imposed a penalty and issue a notice of violation (GD3-10 to GD3-13).

[13] On May 15, 2013, some 5 months later, the Appellant requested that the Respondent reconsider its decision of December 12, 2012 (GD3-18 to GD3-20).

[14] In a letter dated June 25, 2013, the Respondent stated that according to the *Employment Insurance Act* (EI Act) and the *Reconsideration Request Regulations*; the Appellant may request a reconsideration of the Respondent's decision within 30 days after the day on which the decision was communicated to the Appellant. Since the Appellant requested the reconsideration more than 30 days past the time the decision was communicated to him, the Respondent will not reconsider its decision of December 12, 2012 (GD3-25).

[15] On May 14, 2014, the Appellant submitted an incomplete notice of appeal to the General Division of the Tribunal dated April 30, 2014. In this notice of appeal, the Appellant stated that he received the Commission's decision (of June 25, 2013) on April 11, 2014. He delayed in appealing to the Tribunal because he was out of the country due to a death in the family (GD2-2).

[16] On June 27, 2014, the Tribunal requested that the Appellant submit the outstanding information. He was also advised that his appeal appears to have been filed late and was invited to submit his reasons for the delay.

[17] On August 19, 2014, the Appellant resubmitted a copy of his request for reconsider to the Respondent dated May 15, 2013 and requested that the Tribunal represent him at his appeal with the Canada Revenue Agency (GD2A).

[18] On September 4, 2014, the Tribunal sent the Appellant a second letter requesting that he submit the outstanding information.

[19] On September 8, the Appellant left a message with the Tribunal.

[20] On September 9, 11 and 17, 2014, the Tribunal attempted to call the Appellant however was unsuccessful.

[21] On September 25, 2014, the Appellant submitted the requested outstanding information and provided his reasons for the delay in appealing to the Tribunal (GD2B).

SUBMISSIONS

[22] The Appellant submitted that he received the Respondent's letter of June 25, 2013, approximately 10 months later on April 11, 2014 (GD2-2).

[23] The Appellant further argues that he has had a continuing intention to pursue his appeal noting that since December 2012 he has been sending in letters and forms and that he corresponded with the Tribunal in August 2014. He feels that he has many arguable points to make to demonstrate that he is a victim of identity theft that occurred in 1998. He submitted that he delayed in making this appeal because he is an ordinary person that works and has many things to do in a day however; he is now taking the time to pursue this appeal and notes that there will be no further delays as this case is very important. The Appellant submitted that he does not think that an extension of the time to appeal will prejudice other parties (GD2B-3).

ANALYSIS

[24] The Appellant has indicated that he received the Respondent's decision letter dated June 25, 2013, to not reconsideration his claim, on April 11, 2014, approximately 10 months later (GD2-2). The Member noted that on the one hand, the Appellant has repeatedly confirmed that he has been living at the same address for over 16 years (GD2B-3 and GD2-4) and there is no evidence that the letter was returned to the Respondent. On the other hand, there is no evidence to indicate that this decision was communicated to Appellant at any other time. In the absence of any evidence to the contrary, the Member finds that the Claimant received the Respondent's decision letter dated June 25, 2013, to not reconsider his claim, on April 11, 2014.

[25] The Appellant brought a complete appeal to the Tribunal on September 25, 2014, which is more than 4 months after the 30-day legislative deadline set out in subsection 52(1) of the DESD Act. The Member therefore, finds that the Appellant appealed late to the Tribunal.

Continuing Intention to Pursue the Appeal

[26] The Member notes that the Respondent's reconsideration letter was received by the Appellant on April 11, 2014. The evidence shows that the Appellant submitted an incomplete appeal to the Tribunal on May 14, 2014 (dated April 30, 2014), which was already a few days late. He did not complete his appeal until September 25, 2014, almost 5 months later.

[27] During this period of delay, the Tribunal did not receive any correspondence from the Appellant until August 19, 2014, more than 3 months after he started an appeal with the Tribunal. The correspondence that was sent was not relevant to his current appeal in that it was simply a request that the Tribunal represent him at his hearing with the Canada Revenue Agency and included a resubmission of his correspondence to the Respondent dated May 15, 2013(see above).

[28] In the meanwhile, on June 27, 2014, the Tribunal had sent the Appellant a letter requesting the outstanding information required for his appeal. The Appellant did not respond to that letter. On September 4, 2014, the Tribunal sent the Claimant a second letter requesting the same outstanding information. The Tribunal received a telephone message from the Appellant on September 8, 2014. The Tribunal was unsuccessful in reaching the Appellant on September 9, 11 and 17, 2014.

[29] On September 25, 2014, the Appellant submitted the requested outstanding information and provided his reasons for the delay in appealing to the Tribunal (GD2B).

[30] The Member considered that the Appellant is indeed receiving the correspondence from the Tribunal yet he continues to either not respond or delays in responding to matters concerning his appeal. Although the Appellant eventually responded to the

correspondence of the Tribunal, the Member finds that he has not shown a ‘continuing’ intent to pursue his appeal.

Arguable Case

[31] The Appellant is appealing the Respondent’s decision to deny his request to extend the 30 day statutory limitation during which a claimant can make a request for reconsideration of a decision under section 112 of the EI Act.

[32] The evidence on the file indicates that on December 12, 2012, the Respondent advised the Appellant of its decision to retroactively allocate earnings to his benefit period and to impose a penalty and issue a notice of violation. It is undisputed evidence that the Appellant was aware of the Respondent’s decision of December 12, 2012. The Appellant however, requested that the Respondent reconsider its decision on May 15, 2013, approximately 5 months later. The Respondent denied the Appellant’s request noting that he has not shown that he was prevented in any way from submitting his request for reconsideration within 30 days, he did not attempt to contact the Respondent for assistance nor did he provided reasons for the delay.

[33] The Member considered that the Appellant submitted to the Tribunal that he feels that he has many arguable points to make to demonstrate that he is a victim of identity theft and thus, the Respondent’s decision (of December 12, 2012) does not apply to him. The Member notes however, that the reasons that the Appellant puts forth are not regarding the Respondent’s decision of May 15, 2013, denying him the extension of time, which is the issue at hand.

[34] The Member notes that an extension of time to seek reconsideration under section 112 of the EI Act is a discretionary decision of the Respondent and the Tribunal could only intervene if the Respondent did not exercise that discretion in a judicial manner. The Member finds that there were no submissions put forth to support such an intervention rather, the submissions pertain to the initial decision of December 12, 2012. The Member therefore finds that the Appellant’s appeal has no reasonable chance of

success and so the Member is not satisfied that the Appellant has an arguable case on appeal.

Reasonable Explanation for the Delay

[35] When the Appellant first submitted his incomplete notice of appeal on May 14, 2014, the Appellant indicated that he appealed late because he was out of the country due to a death in the family (GD2-2). On June 27, 2014, the Appellant was asked by the Tribunal to provide his reasons for the delay. The Appellant did not respond to that letter. On September 4, 2014, the Appellant was sent a second letter. On September 25, 2014, three weeks later, the Appellant indicated that he is like any other ordinary person that works and has many things to do in a day however; he is now going to take the time to pursue this appeal because it is very important (GD2B-3).

[36] The Member considered that the Respondent advised the Appellant (in bold font) of the 30-day statutory deadline in its reconsideration decision letter. The Appellant's written submissions demonstrate a level of literacy that would be sufficient to understand an appeal deadline. Yet he did not file a complete appeal with the Tribunal for several months thereafter. The explanation offered by the Appellant that he had a death in the family would account for only part of the delay. His explanation that he was too busy is not commensurate of the importance, that he submits, that this appeal garners. The Member therefore, finds that the Appellant has not offered a reasonable explanation for the delay.

Prejudice to the Other Party

[37] Should the Tribunal exercise its discretion to extend the time to appeal; the Respondent's interests do not appear to be significantly prejudiced even though 4 months have lapsed after the legislated 30 days to bring the appeal to the General Division of the Tribunal. The Respondent's ability to address the appeal, given its resources, would not be unduly affected by this extension of time to appeal.

CONCLUSION

[38] In consideration of all of the above factors, the Member finds that in this case, an extension of time to appeal beyond the legislated 30-day deadline is not appropriate pursuant to subsection 52(2) of the DESD Act. The Member placed more weight on the first three criteria under consideration, since they pertain to the Appellant and his appeal, than on the latter criteria. The Member concludes therefore, that although the interests of the Respondent would not be unduly affected by this extension of time to appeal, it is not in the interest of justice, to allow the Appellant to pursue an appeal that is not arguable, especially since he neither showed a continuing intent to appeal or provided a reasonable explanation for the delay.

[39] The extension of time within which to bring the appeal is refused.

Eleni Palantzas
Member, General Division