



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v. Canada Employment Insurance Commission*, 2018 SST 502

Tribunal File Number: AD-17-478

BETWEEN:

J. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Stephen Bergen

Date of Decision: May 23, 2018

DECISION AND REASONS

DECISION

[1] An extension of time to apply for leave to appeal is refused.

OVERVIEW

[2] The Applicant, J. M. (Claimant), applied for Employment Insurance benefits in December 2010. His claim was approved and a benefit period was established. Sometime after the Claimant began collecting benefits, the Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had not declared his earnings while in receipt of benefits. The Commission issued a December 2011 decision in which it allocated the undeclared earnings, found that the Claimant had knowingly made a number of false statements, imposed a penalty, and issued a notice of violation.

[3] The Claimant waited until November 1, 2012, to appeal the Commission decision to the Board of Referees. His appeal was outside the 30-day appeal period, and the Commission refused to accept it. The Claimant further appealed the Commission's denial of an extension of time. The Board of Referees denied this appeal on March 28, 2013, finding that the Commission had exercised its discretion judiciously in denying the extension.

[4] The Claimant sought leave to appeal the Board of Referees decision to the Social Security Tribunal. The application was received in February 2016 but mistakenly assigned to the General Division. In June of 2017, the file was transferred to the Appeal Division where it might properly be considered.

[5] There is no reasonable chance of success. The leave to appeal application was not brought within one year of the date on which the Board of Referees decision was communicated to the Claimant, and the Appeal Division therefore has no discretion to grant an extension of time to consider the leave application.

ISSUE

[6] Can I grant the Claimant an extension of time to bring the application for leave to appeal?

ANALYSIS

[7] Paragraph 57(1)(a) of the *Department of Employment and Social Development Act* (DESD Act) stipulates that an application for leave to appeal must be made to the Appeal Division within 30 days of the date on which it is communicated to the appellant.

[8] Subsection 57(2) of the DESD Act states that the Appeal Division may allow an appellant additional time in which to bring an application for leave to appeal, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.

[9] On his application for leave form, the Claimant explained that he has moved more than once and cannot keep track of his mail. However, he was unable to provide any indication of when he might actually have received the Board of Referees decision. In fact, he states that he has “no idea” when he received the decision (Question 3A, AD1B-2).

[10] The Board of Referees decision (AD1H-3) states on its face that it was sent on April 2, 2013. Paragraph 19(1)(a) of the *Social Security Tribunal Regulations* deems a decision that is sent by ordinary mail to be communicated 10 days after the date on which it was mailed. Given the absence of evidence to rebut that presumption of delivery, I accept that the decision was communicated to the Claimant on April 12, 2013.

[11] The application for leave was initially received by the Social Security Tribunal on February 4, 2016, which is about 2 years and 10 months from the date that the Board of Referees decision was communicated. Given the restrictions of s. 57(2) of the DESD Act, I have no discretion to allow an extension of time in these circumstances.

CONCLUSION

[12] An extension of time to apply for leave to appeal is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	J. M., self-represented
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