



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. W. v Canada Employment Insurance Commission*, 2019 SST 355

Tribunal File Number: AD-18-439

BETWEEN:

A. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Valerie Hazlett Parker

Date of Decision: April 18, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] A. W. (Claimant) worked as a part-time sales associate. She left her job because she was offered fewer hours of work. The Employer offered her some work at another location, however, the Claimant did not report for work there. The Claimant applied for Employment Insurance benefits. The Canada Employment Insurance Commission refused the application because it decided that the Claimant voluntarily left her employment without just cause.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal because it also decided that the Claimant voluntarily left her employment without just cause. The Claimant filed the application to the Tribunal's Appeal Division late. Time to file the application is not extended because the Claimant did not have a continuing intention to appeal and the appeal does not have a reasonable chance of success.

ISSUE

[4] Did the Claimant file the application requesting leave to appeal late?

[5] If so, should time to file the application be extended?

ANALYSIS

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It states that an application for leave to appeal to the Appeal Division must be made within 30 days of when the General Division decision is communicated to the Claimant.¹ This time may be extended, but in no case may an application be filed more than one year after the decision was communicated to the Claimant.²

¹ DESD Act s. 57(1)

² DESD Act s. 57(2)

Issue 1: Was the application late?

[7] The General Division decision is dated May 28, 2018. In the application to the Appeal Division, the Claimant does not say when she received the decision. The *Social Security Tribunal Regulations* state that a decision is deemed to have been communicated to a person ten days after it was mailed to them.³ Therefore, the Claimant is deemed to have received the decision on June 7, 2018. The application to the Appeal Division was filed with the Tribunal on July 9, 2018, but it was incomplete because information was missing. The Tribunal wrote to the Claimant twice and on each occasion explained what grounds of appeal the Appeal Division can consider and requested that the Claimant provide grounds of appeal and other missing documents. The Claimant responded by writing that there was “no missing application” on the bottom of the letters. The Claimant also acknowledged that the application was late and explained that this was because she did not have money to send the application to the Tribunal.

[8] The Claimant’s application was filed late because all of the necessary documents required from the Claimant were not filed with the Tribunal until more than 30 days after the General Division decision was communicated to the Claimant.

Issue 2: Should time be extended to file an application?

[9] The Federal Court teaches that I should consider the following factors when deciding whether to extend time to file an application:

- a) was there a reasonable explanation for the delay?
- b) Was there a continuing intention to appeal?
- c) Is there any prejudice to another party?
- d) Is there an arguable case on appeal?⁴

The weight to be given to each of these 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

³ *Social Security Tribunal Regulations* s. 19

⁴ *Canada (Minister of Human Resources Development) v. Gatellaro*, 2005 FC 883

served.⁵

[10] The Claimant has given an explanation for filing documents late – her financial circumstances. However, she has not provided any information about whether she had a continuing intention to appeal, nor regarding any prejudice to the other party to the appeal.

[11] In addition, the Claimant has not provided any grounds of appeal. The DESD Act sets out only three grounds of appeal that I can consider. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.⁶ In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success. Legally, this is the same as disclosing an arguable case on appeal.

[12] The principles of natural justice are concerned with ensuring that all parties to an appeal have the opportunity to present their legal case to the Tribunal, to know and answer the other parties' legal case, and to have the decision made by an impartial decision maker based on the law and the facts.

[13] The Claimant says that she wishes to appeal because of her dire financial straits. However, this does not point to any error made by the General Division and so is not a ground of appeal under the DESD Act. Therefore, the appeal does not have a reasonable chance of success.

[14] I place the most weight on the fact that the Claimant has not presented a ground of appeal under the DESD Act. It is not in the interest of justice to extend time to file an application that does not have any reasonable chance of success on its merits.

CONCLUSION

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

⁵ *Canada (Attorney General) v. Larkman*, 2012 FCA 204

⁶ DESD Act s. 58(1)

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	A. W. Self-represented
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