



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. D. v Canada Employment Insurance Commission*, 2019 SST 442

Tribunal File Number: AD-18-654 and AD-18-653

BETWEEN:

A. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: May 8, 2019

DECISION AND REASONS

DECISION

[1] An extension of time to file the applications is refused.

OVERVIEW

[2] A. D. (Claimant) had interruptions in earnings because he was incarcerated and because he left a job. He applied for Employment Insurance benefits twice. The Canada Employment Insurance Commission refused the applications because he was disentitled from receiving benefits when incarcerated, and because he voluntarily left a workplace (X) without just cause. The Commission also imposed penalties on the Claimant for knowingly making false statements on his employment insurance reports.

[3] The Claimant appealed the Commission's decisions regarding his disentitlements and penalties to the Tribunal. The Tribunal's General Division allowed the Claimant's appeals in part, deciding that the Claimant was disentitled from receiving benefits while incarcerated, that he left his employment with Taranis voluntarily without just cause, but that no penalties should be imposed because the Claimant did not knowingly make false statements on his reports.

[4] The Claimant seeks to appeal the General Division's decisions because he was not aware of the hearings and did not attend them, so was not able to present his case. He also says that he did not receive documents from the Tribunal. However, the applications to the Appeal Division were filed late. An extension of time to file the applications is refused because the Claimant did not have a continuing intention to appeal, has not provided a reasonable explanation for his delay and the appeals do not have a reasonable chance of success.

PRELIMINARY MATTERS

[5] The Claimant made two separate applications for Employment Insurance benefits. This resulted in two separate appeals to the Tribunal's General Division. The same legal issues are

presented in the appeals. The circumstances of the Claimant's interruptions of earnings are the same in both appeals (the Claimant being incarcerated). Therefore, the applications are joined.¹

[6] The Tribunal scheduled a pre-hearing teleconference on May 1, 2019, so that the parties could discuss procedural and other matters. The Claimant did not attend the teleconference. Therefore, it did not proceed.

ISSUE

[7] Were the applications to the Appeal Division filed late?

[8] If so, should time to file the applications be extended?

ANALYSIS

[1] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It states that an application to Appeal Division must be made within 30 days of the General Division decision being communicated to the Claimant.² The General Division decisions are dated August 10, 2018 and August 21, 2018. The Claimant does not state when he received the decisions. However, the *Social Security Tribunal Regulations* provide that a decision is deemed to have been received by a claimant ten days after it is mailed to them.³ Therefore, they are deemed to have been received by the Claimant on August 20, 2018 and August 31, 2018. The applications to the Appeal Division were received on October 9, 2018, which is more than 30 days after the decisions were communicated to the Claimant. They were filed late.

[9] The DESD Act also states that the time to file an application be extended.⁴ Therefore, I must decide whether to extend time for the applications to the Appeal Division to be filed. When assessing this, the following factors must be considered:

¹ Section 13 of the *Social Security Tribunal Regulations* permits the joining of appeals where there are common facts and legal issues.

² DESD Act s. 57(1)

³ *Social Security Tribunal Regulations* s. 19

⁴ DESD Act s. 57(2)

- a) is there a continuing intention to pursue the application;
- b) is there is a reasonable explanation for the delay;
- c) is there any prejudice to the other party in allowing the extension; and
- d) does the matter disclose an arguable case.⁵

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 served.⁶

The Claimant states that his reason for making the application late is “I just received email and printed-out form and sent it out immediately”.⁷ This does not establish that the Claimant had a continuing intention to appeal or a reasonable explanation for his delay. There is also no basis for me to decide whether the other party would be prejudiced if the matter were to proceed.

[10] I must also consider whether the Claimant has presented an arguable case on appeal. Legally, this is the same as whether the appeal has a reasonable chance of success. This is the same legal test that is to be met to be granted leave to appeal under the DESD Act.⁸ This Act sets out only three grounds of appeal that can be considered. They are that that the General Division failed to observe a principle of natural justice, 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.⁹

[11] 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 legal case of the other party and to have a decision made by an impartial decision maker based on the law and the facts. The Claimant says that his representative attend went to a Service Canada office for the General Division hearings and that after waiting for some time was told that there

⁵ *Canada (Minister of Human Resources Development) v. Gatellaro*, 2005 FC 883

⁶ *Canada (Attorney General) v. Larkman*, 2012 FCA 204

⁷ AD1-4 in both appeal files

⁸ DESD Act s. 58(2)

⁹ DESD Act s. 58(1)

was no meeting scheduled. However, the hearing of the appeals were scheduled for teleconferences. The representative signed to receive the notices that set out the hearing details for both appeals, including how to connect to the teleconference. Therefore appeal does not have a reasonable chance of success on the basis that the Claimant was not able to attend the hearings and present his case.

[12] The Claimant also argues that he did not receive documents from the Tribunal, although it is not clear what documents he is referring to. Without this, I am not satisfied that the appeal has a reasonable chance of success based on the Claimant not having all of the relevant documents.

CONCLUSION

[13] It is not in the interests of justice to extend the time for the Claimant to file the applications with the Appeal Division. The Claimant has not established that he had a continuing intention to appeal or a reasonable explanation for his delay. I placed greater weight on the fact that the appeal does not have a reasonable chance of success. It serves no purpose to extend the time to file an application if the appeal does not have a reasonable chance of success on its merits.

[14] An extension of time is refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	L. D., for the Applicant
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