



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. D. v Canada Employment Insurance Commission*, 2019 SST 507

Tribunal File Number: AD-19-194

BETWEEN:

H. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Jude Samson

Date of Decision: May 24, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] H. D. is the Claimant in this case. He worked as a long-haul truck driver in Canada and the United States until December 2017, when his passport was stolen. The Claimant's former employer insisted that he replace his passport, but the Claimant objected to the fees being charged and refused to do so. As a result, there was a live issue in this case as to whether the Claimant had quit his employment in December 2017, was fired, or was laid off because of a shortage of work.

[3] The Claimant submitted his application for regular Employment Insurance (EI) benefits in February 2018. However, the Canada Employment Insurance Commission (Commission) disqualified the Claimant from receiving those benefits because he had voluntarily left his job without just cause, as described under sections 29 and 30 of the *Employment Insurance Act*. The Claimant challenged that decision, but the Commission maintained it on reconsideration.

[4] The Claimant then appealed the Commission's decision to the Tribunal's General Division, but it dismissed his appeal. It is worth noting that the General Division did not find that the Appellant had voluntarily left his job but was dismissed for not renewing his passport, which was an essential term of his contract. Nevertheless, the General Division's finding had no impact on the Claimant's disqualification from receiving EI benefits.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but he has an initial hurdle to overcome before the file can move forward. In particular, the Claimant's Application to the Appeal Division was filed after the 30-day deadline had expired, so he needs an extension of time to apply for leave to appeal.

[6] I am refusing the Claimant's request for an extension of time. These are the reasons for my decision.

ISSUES

[7] In reaching this decision, I focused on the following issues:

- a) Was the Claimant's Application to the Appeal Division filed late?
- b) Should the Claimant be given an extension of time to apply for leave to appeal?

[8] It is worth highlighting that the Claimant was invited to address the relevant issues in this decision directly on his Application to the Appeal Division.¹ His answers were sparse, however, and so the questions were repeated in a letter from the Tribunal dated March 21, 2019, but the Claimant never responded to the Tribunal's letter.

ANALYSIS

Issue 1: Was the Claimant's Application to the Appeal Division filed late?

[9] Yes, the Claimant was late filing his Application to the Appeal Division.

[10] Applications to the Appeal Division are due within 30 days of when claimants receive the General Division decision, but the Appeal Division can allow extensions of time if the application is filed less than a year late.²

[11] In this case, it seems clear that the Claimant had received the General Division decision by February 5, 2019, since he contacted the Tribunal by telephone on that day to ask questions about it. As a result, his Application to the Appeal Division was due on March 7, 2019, at the latest, but the Tribunal received it instead on March 18, 2019, meaning that it was less than two weeks late.

[12] Overall, therefore, the Claimant missed the deadline for filing his Application to the Appeal Division, though an extension of time is possible in this case.

¹ AD1.

² *Department of Employment and Social Development Act* (DESD Act), ss 57(1)(a) and 57(2).

Issue 2: Should the Claimant be given an extension of time to apply for leave to appeal?

[13] No, the Claimant has not met the legal test for obtaining an extension of time.

[14] When deciding this issue, I considered and weighed the following four factors:³

- a) Has the Claimant shown a continuing intention to pursue his appeal?
- b) Has he provided a reasonable explanation for the delay?
- c) Would any other party be prejudiced by the granting of the extension?
- d) Is there an arguable case on appeal?

[15] Not all four factors need to be met; the overriding consideration is that the interests of justice be served.⁴

A continuing intention to pursue the appeal

[16] Tribunal records show that, as early as on February 6, 2019, the Claimant told Tribunal staff that he would be appealing the General Division decision. The Claimant's intention of appealing the General Division decision was also expressed in later calls between the Claimant and Tribunal staff. Importantly, however, there is no evidence that the Claimant told the Commission that he intended to appeal the General Division decision. In my view, this factor is neutral.

A reasonable explanation for the delay

[17] Following his request, the Tribunal mailed a blank copy of the Application to the Appeal Division form to the Claimant on February 6, 2019. On February 25, 2019, the Claimant told Tribunal staff that he would be returning the completed form to the Tribunal by fax. Nevertheless, on March 4, 2019, and again on March 8, 2019, the Claimant phoned the Tribunal

³ *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.

⁴ *Canada (Attorney General) v Larkman*, 2012 FCA 204.

denying that he had ever received the relevant form, and so the Tribunal resent the form to the Claimant a second and third time.

[18] During the telephone conversation between the Claimant and Tribunal staff on March 4, 2019, the Claimant asked that a note of the conversation be put on file in case his Application to the Appeal Division was filed late. This shows that the Claimant was aware of the deadline for filing his application. Nevertheless, the only explanation that he provided for the lateness of his application was: “Awaiting government legislation on this matter.”⁵

[19] In my view, the Claimant has not provided a reasonable explanation for the delay in this case. On the question of whether he had received the relevant form or not, the Claimant contradicted himself in his calls with Tribunal Staff. It is also unknown what new legislation the Claimant might be awaiting, when it will take effect, or its impact on the outcome of his case.

Prejudice to another party

[20] Given the Commission’s resources and the availability of relevant documents, there is no obvious reason why the Commission’s ability to respond to the appeal would be unduly affected by allowing the extension of time.

Arguable case

[21] In my view, the Claimant does not have an arguable case on appeal.

[22] At the Appeal Division level, the focus is on whether the General Division might have committed one or more of the recognized errors (grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). As a result, the Appeal Division can intervene in a case only if the General Division:

- a) breached a principle of natural justice or made an error relating to its jurisdiction;
- b) rendered a decision that contains an error of law; or

⁵ AD1-3.

- c) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[23] In this particular case, the Claimant alleges that General Division decision contains an error of law. Again, he wrote that he is “awaiting government legal legislation on this matter.”⁶ The Claimant also wrote that he was waiting for more information that he could not provide at the first hearing.⁷

[24] In my view, the arguments put forward by the Claimant do not give rise to an arguable case on appeal. For example, the Claimant does not allege that the General Division misapplied the law as it stood on the day of its decision. In addition, the Federal Court has already made clear that new documents do not constitute a ground of appeal under section 58(1) of the DESD Act.⁸

[25] It is worth highlighting again that, in the Tribunal’s letter dated March 21, 2019, the Claimant was asked to provide more details surrounding the reasons for his appeal, and was given examples corresponding to each of the three grounds of appeal described above. As already mentioned, however, he never responded to the Tribunal’s letter.

[26] While the arguments the Claimant is advancing in his Application to the Appeal Division do not fit comfortably within the Appeal Division’s legal framework, I am nevertheless mindful of Federal Court decisions in which the Appeal Division has been warned against reviewing requests for leave to appeal in an overly strict way. Instead, the Appeal Division should review the underlying record to determine whether the General Division misinterpreted or failed to properly consider any of the evidence.⁹

⁶ AD1-2.

⁷ AD1-4.

⁸ *Tracey v Canada (Attorney General)*, 2015 FC 1300 at para 29; *Belo-Alves v Canada (Attorney General)*, 2014 FC 1100 at para 73.

⁹ *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

[27] After reviewing the documentary record and examining the decision under appeal, I am satisfied that the General Division neither misinterpreted nor failed to properly consider any relevant evidence.

[28] For all of these reasons, I find that the Claimant does not have an arguable case on appeal.

Conclusion on the extension of time

[29] Though the factors above are somewhat balanced, I have also made an overall assessment of what the interests of justice might require. In this respect, I acknowledge that the refusal to grant an extension of time means that the Claimant's appeal ends here, but I must weigh that against the extent to which the interests of justice would be served by allowing an appeal to proceed even though it has no reasonable chance of success.

[30] I am aware of cases in which the Federal Court and Federal Court of Appeal have given particular weight to the arguable case factor, and I find that that factor is entitled to significant weight in this case too.¹⁰

[31] Having considered the four factors above and the interests of justice, I have decided that the extension of time needed to apply for leave to appeal should be refused.

CONCLUSION

[32] The Claimant requires an extension of time for his application to move forward. Although I sympathize with the Claimant's circumstances, I have concluded that I must refuse his request for an extension of time.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	H. D., self-represented
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¹⁰ *McCann v Canada (Attorney General)*, 2016 FC 878; *Maqsood v Canada (Attorney General)*, 2011 FCA 309.