



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. G. v Canada Employment Insurance Commission*, 2019 SST 667

Tribunal File Number: AD-19-259

BETWEEN:

**A. G.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Decision on Request for Extension of Time by: Jude Samson

Date of Decision: July 22, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] A. G. is the Claimant in this case. In 2017 and 2018, he received Employment Insurance (EI) regular benefits and sickness benefits. However, the Canada Employment Insurance Commission (Commission) made a number of adjustments to the Claimant's file because:

- a) he had initially received EI regular benefits for four weeks in May and June 2018, but later said that he was unavailable for work during those dates;
- b) the General Division issued a decision dated January 14, 2019, in which the Claimant's entitlement to EI regular benefits increased from 14 to 16 weeks; and
- c) the Commission reduced the Claimant's weekly benefit rate from \$271 to \$261.

[3] In implementing these changes, the Claimant argues, on the one hand, that the Commission underpaid his benefits. On the other hand, the Commission argues that the Claimant has been overpaid, and that he needs to reimburse some of the benefits that he has received.

[4] Alas, I have neither the information nor the jurisdiction to resolve this dispute between the parties. Nevertheless, I hope that this decision might shed a bit of light on some of the relevant issues. Ultimately, however, I have decided to refuse the extension of time that the Claimant needs for his appeal to move forward.

### **ISSUES**

[5] The Claimant's Application to the Appeal Division is what brings this file before me. However, the Claimant appears to have filed his Application late. If the Application is in fact late, then the Claimant needs an extension of time for the file to move forward.

[6] When reaching this decision, therefore, I asked and answered the following questions:

a) Was the Claimant late in filing his Application to the Appeal Division?

b) If so, should I grant the Claimant an extension of time?

[7] It is worth highlighting that I found the Claimant's Application to the Appeal Division somewhat unclear. As a result, I invited the parties to attend a pre-hearing conference on June 3, 2019. Following the pre-hearing conference, I confirmed some of the issues in dispute and requested further information from the parties, which they later provided.<sup>1</sup>

## **ANALYSIS**

### **Issue 1: Was the Claimant late in filing his Application to the Appeal Division?**

[8] Yes, the Claimant's Application to the Appeal Division was late.

[9] The Claimant's Application to the Appeal Division was due within 30 days of when he received the General Division decision. Nevertheless, I could extend the time for the Claimant to file his Application, as long as he filed it less than a year late.<sup>2</sup>

[10] In this case, the Tribunal sent the General Division decision to the Claimant by email on January 16, 2019. As a result, I can assume that the Claimant received the decision the next day.<sup>3</sup> The Claimant's Application to the Appeal Division then became due 30 days after that, so on Monday, February 18, 2019. Instead, however, the Tribunal received the Claimant's Application to the Appeal Division on April 8, 2019.

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

### **Issue 2: Should I grant the Claimant an extension of time?**

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

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<sup>1</sup> AD4-6.

<sup>2</sup> *Department of Employment and Social Development Act*, ss 57(1)(a) and 57(2).

<sup>3</sup> Section 19(1)(c) of the *Social Security Tribunal Regulations* allows me to make this assumption.

[13] I weighed four factors when deciding whether to extend the time for the Claimant to file his Application to the Appeal Division:<sup>4</sup>

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

[14] The Claimant does not have to satisfy all four factors; the overriding consideration is that the interests of justice be served.<sup>5</sup>

[15] In this case, the General Division decision is dated January 14, 2019. That same month, the Claimant contacted the Commission about the additional weeks of benefits to which he claims to be entitled.<sup>6</sup>

[16] Partly due to a change of address, the Claimant also says that it was not until March 1, 2019, that he learned of the Minister's February 6, 2019, decision to lower his weekly benefit rate to \$261. He says that he immediately tried to challenge that decision, though there has been much confusion about the proper way of doing that.<sup>7</sup>

[17] There can be little question about the Claimant's diligence in pursuing this matter.

[18] I am satisfied, therefore, that the Claimant has shown a continuing intention to pursue the appeal and a reasonable explanation for the delay in filing his appeal.

[19] Given the brief delay and the availability of relevant documents, I also find that 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.

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<sup>4</sup> These factors were set out by the Federal Court in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.

<sup>5</sup> *Canada (Attorney General) v Larkman*, 2012 FCA 204.

<sup>6</sup> AD6-3.

<sup>7</sup> AD1-4.

[20] Although the Claimant succeeds on the first three factors, I find the fourth factor to be the most important: Is there an arguable case on appeal?

[21] Briefly, the Claimant argues that he has not received all of the benefits to which he is entitled. There is something compelling about the Claimant's arguments.

[22] In the beginning, for example, the Commission awarded the Claimant 14 weeks of EI regular benefits at a weekly rate of up to \$271. Using the worksheet the Commission provided, those benefits would have run out during the week of July 22 to 28, 2018.<sup>8</sup>

[23] However, the Claimant later admitted that he was unavailable for work during the weeks starting May 13, May 20, May 27, and June 3, 2018. As a result, the Claimant was not entitled to the benefits that he received during those weeks. The Claimant has not disputed this. And so the Commission demanded that the Claimant repay \$1,084 (being four weeks of regular benefits at \$271/week).<sup>9</sup>

[24] However, the Claimant then became entitled to those four weeks of regular benefits in a later period: the weeks starting July 29, August 5, August 12, and August 19, 2018. The Claimant might have thought that one would offset the other and that the Commission would cancel the notice of debt that it had issued to him. He alleges, however, that the Commission insisted on the debt being repaid **and** refused to pay the alternative four weeks of benefits until he had done so.

[25] The General Division then determined that the Claimant was entitled to an additional two weeks of EI regular benefits. At the same time, however, the Commission recalculated the Claimant's weekly benefit rate and reduced it from \$271 to \$261. According to the Commission, this created a \$280 overpayment.<sup>10</sup> Nevertheless, the Claimant might have reasonably thought that this debt would be more than offset by the two additional weeks of EI regular benefits that

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<sup>8</sup> The Commission's worksheet at page AD5-10 is a useful guide for visualizing the relevant weeks in question. According to that worksheet, July 22 to 28, 2018, is marked as week 10 of the Claimant's EI regular benefits. But it would have been week 14 initially, before the four-week disentitlement (in red) was removed from the equation.

<sup>9</sup> AD5-4 to 6.

<sup>10</sup> AD5-7 to 8. The Commission paid the additional \$10/week to the Claimant over 15 weeks of EI sickness benefits and 13 weeks of EI regular benefits.

were owing to him. Instead, however, the Claimant said that the only thing he received after the General Division decision was another notice of debt.<sup>11</sup>

[26] Despite these offsets, therefore, the Commission claims that the Claimant was overpaid \$1,364. More specifically, the information provided by the Commission suggests that it paid the Claimant 20 weeks of EI regular benefits, with all but the last three weeks being overpaid by \$10/week.

[27] According to the Commission, these are the benefits that it has paid to the Claimant and the benefits to which the Claimant is, in fact, entitled.<sup>12</sup>

<b>Description</b>	<b>Amount Paid</b>	<b>Entitlement<sup>13</sup></b>
• Sickness benefits (15 weeks)	\$4,065	\$3,915
• Regular benefits (16 weeks)	\$4,951	\$4,130
<b>Total</b>	<b>\$9,016</b>	<b>\$8,045</b>

[28] On the one hand, therefore, the Commission argues that the Claimant should reimburse \$971, some of which he has already repaid. On the other hand, however, the Claimant argues that the Commission withheld some of the money that it owes to him.

[29] Unfortunately, the Commission's submissions to date may do little to reassure the Claimant in terms of what the Commission has actually paid to him (that is, deposited into his bank account). In addition, the Commission's worksheet provides no information regarding the timing of its payments to the Claimant.

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<sup>11</sup> Even at the new weekly benefit rate, the General Division decision should have resulted in the Claimant receiving \$242 in benefits (\$261/week x 2 weeks, minus the \$280 overpayment).

<sup>12</sup> See AD5-10. According to that worksheet, the Commission paid sickness benefits of \$271/week for 15 weeks when it should have paid \$261/week instead. In terms of regular benefits, this worksheet suggests that the Commission paid \$225 in week 1 when it should have paid \$215 instead. It also says that it paid \$271 for 16 weeks when it should have paid \$261 for just 12 of those weeks. Finally, in the last three weeks, the Commission paid \$261/week minus \$131/week, which it applied against the Claimant's overpayment.

<sup>13</sup> In short, this is \$261/week x 30 weeks + \$215/week x 1 week (15 weeks of sickness benefits plus 16 weeks of regular benefits equals 31 weeks in all). The amount the Commission paid to the Claimant in week 1 of his regular benefits is lower than in all other weeks because the Claimant had some earnings during that week.

[30] Regardless of this uncertainty and confusion, when deciding whether the Claimant has an arguable case on appeal, I must focus on the three relevant errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act*. Generally speaking, therefore, I consider whether the General Division might have:

- 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
- 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?

[31] In this particular case, the Claimant alleges that the “EI Agent made an error in the re-calculation of the wage rate.”<sup>14</sup> By wage rate, I understand the Claimant to be referring to his weekly benefit rate, which went down by \$10/week after the General Division decision.

[32] The Claimant correctly points out that the General Division did not do this calculation itself. Indeed, both the Commission’s reconsideration decision<sup>15</sup> and the General Division decision deal only with the number of weeks of benefits to which the Claimant is entitled and not to the Claimant’s weekly benefit rate.

[33] Since the Claimant is not complaining of an error made by the General Division, I have no jurisdiction over this issue, and his complaint does not amount to an arguable case on appeal.

[34] Despite some initial confusion, the Commission now seems to accept that its decision dated February 6, 2019, is a new decision and that it should have informed the Claimant of his right to request a reconsideration of that decision.<sup>16</sup> As a result, if the Claimant still wishes to challenge the Commission’s decision to change his weekly benefit rate from \$271 to \$261, he should quickly write to the Commission and ask it to reconsider that decision.

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<sup>14</sup> AD1-3.

<sup>15</sup> GD3-48.

<sup>16</sup> AD5-2.

[35] In his submissions, the Claimant also argues that the General Division committed an error by failing to make clear in its decision that the Commission was required to fully implement the terms of the EI Act, and not just those that operate to the Commission's benefit.<sup>17</sup>

[36] The General Division was not required to direct the Commission to implement its decision in accordance with the law. Including those words in its decision was unnecessary. The Commission must always act within its statutory powers and apply the law as it is written. As a result, this argument does not amount to an arguable case on appeal.

[37] The Claimant also insists that the Commission has not paid him all the benefits to which he was entitled. The Claimant may be able to use the information above and compare it to the amounts that the Commission actually deposited into his bank account to confirm whether this is, in fact, the case.

[38] In any event, I do not have the power to order that the parties provide me with the additional information that I would need to make this determination. Similarly, I have no power to order that the Commission pay money to Claimant. If the Claimant remains convinced that the Commission has underpaid him, then he should pursue his claim at the Federal Court.

[39] Since these complaints fall outside of the Tribunal's jurisdiction, they too cannot give rise to an arguable case on appeal.

[40] Finally, the Claimant argues that he was entitled to benefits in September and October 2018, which corresponds to the end of his benefit period.<sup>18</sup> In this respect, the General Division decision is clear: the Claimant is entitled to 16 weeks of EI regular benefits. At the pre-hearing conference, the Claimant confirmed that he is not challenging that part of the General Division decision.

[41] Clearly, therefore, the Claimant's entitlement to EI regular benefits ran out at the end of 16 weeks, even if there was still time left in his benefit period. According to the Commission's worksheet, it approved all 16 weeks of benefits at the maximum amount, with the exception of

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<sup>17</sup> AD6-2.

<sup>18</sup> AD6-2 to 3.



the first week in which the Claimant had some earnings.<sup>19</sup> Those 16 weeks expired, therefore, with the week starting September 2, 2018, though I acknowledge that, in fact, the Claimant might have received those payments much later.

[42] As a result, the table above accurately reflects the maximum amount of benefits to which the Claimant is entitled (assuming that the new rate of weekly benefits is correct). Given that the Claimant accepts that he is only entitled to 16 weeks of benefits, it is unclear to me why he is claiming benefits later in September and October 2018.

[43] In addition to the arguments advanced by the Claimant, I reviewed the documentary record, examined the decision under appeal, and satisfied myself that the General Division did not misinterpret or fail to properly consider any relevant evidence.<sup>20</sup>

[44] As a result, I conclude that the Claimant does not have an arguable case on appeal.

[45] Overall, therefore, three of the four factors above lean towards granting the extension of time. However, I must also consider the interests of justice. 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.

[46] I am aware of cases in which the courts have given particular weight to the arguable case factor, and I find that that factor is entitled to significant weight in this case too.<sup>21</sup>

[47] Having considered the four factors above and the interests of justice, I have decided to refuse the extension of time that the Claimant needs for his appeal to move forward.

## **CONCLUSION**

[48] I sympathize with the Claimant's circumstances and am disappointed that I was unable to bring a greater sense of finality to this dispute. Nevertheless, I hope that this decision might be of

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<sup>19</sup> AD5-10.

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

<sup>21</sup> *McCann v Canada (Attorney General)*, 2016 FC 878; *Maqsood v Canada (Attorney General)*, 2011 FCA 309.

some use to the parties and might even inspire the Commission to provide the Claimant with some additional reassurance that he has received all of the benefits to which he is entitled, and possibly more. Should it be revealed that the Claimant was underpaid, however, I would hope that the situation could be resolved quickly and without the need for further litigation.

[49] The Claimant's request for an extension of time is refused.

Jude Samson  
Member, Appeal Division

REPRESENTATIVES:	A. G., self-represented S. Prud'Homme, for the Respondent
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