



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation : *Z. S. v Canada Employment Insurance Commission*, 2019 SST 702

Tribunal File Number: AD-19-365

BETWEEN:

Z. S.

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: August 8, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] Z. S. is the Claimant in this case. In November 2017, she applied for Employment Insurance (EI) regular benefits, but the Canada Employment Insurance Commission refused her application. The Commission based its initial decision on the hours of insurable employment that the Claimant had earned in the 52 weeks immediately before her November 2017 application date.¹ This 52-week period is known as the Claimant's qualifying period.

[3] Later, however, the Commission agreed to the Claimant's request for an antedate. This means that the Commission treated the Claimant's initial application for regular benefits as though she had filed it in February 2017, when she stopped working.

[4] More specifically, the Commission looked at the hours of insurable employment that the Claimant had earned from February 7, 2016, to February 4, 2017 (the Claimant's new qualifying period). Using this figure (1,082 hours), plus Vancouver's regional rate of unemployment in February 2017 (5.2%), the Commission determined that the Claimant was entitled to 19 weeks of EI regular benefits.²

[5] Nevertheless, the Claimant was once told that, in some cases, the Commission will extend the qualifying period to a maximum of 104 weeks.³ As a result, the Claimant asked the Commission to extend the qualifying period in her case. She argued that she is deserving of an extension because she is in poor health, in desperate financial need, has onerous family obligations, and because she had previously accumulated many more "unused" hours of insurable employment.

¹ GD2-8.

² Section 12(2) and schedule I of the *Employment Insurance Act* (EI Act) establish the maximum number of weeks for which the Claimant could receive EI regular benefits.

³ GD2-9.

[6] The Commission rejected the Claimant's request. The Commission concluded that the *Employment Insurance Act* (EI Act) establishes the maximum number of weeks for which a person can receive benefits and that the Claimant did not meet any of the circumstances required for extending her qualifying period.⁴ The Claimant challenged the Commission's decision to the Tribunal's General Division, but it dismissed her appeal. In short, the General Division accepted that the Commission had correctly decided the Claimant's case.

[7] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but she was late in filing her application to the Appeal Division. As a result, she needs an extension of time to file her application.

[8] Unfortunately for the Claimant, I have decided that I must refuse an extension of time in this case. These are the reasons for my decision.

ISSUES

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

- a) Was the Claimant late in filing her application to the Appeal Division?
- b) If so, should I grant the Claimant an extension of time?

Issue 1: Was the Claimant late in filing her application to the Appeal Division?

[10] Yes, the Claimant accepts that she filed her application to the Appeal Division late.⁵

[11] The Claimant's application to the Appeal Division was due within 30 days of when she received the General Division decision. Nevertheless, I have the power to extend the time for the Claimant to file her application, as long as she filed it less than a year late.⁶

[12] In this case, the Tribunal sent the General Division decision to the Claimant by email on December 11, 2018. As a result, I can assume that the Claimant received the decision the next

⁴ Section 8(1) of the EI Act defines qualifying periods. Section 8(2) of the EI Act lists circumstances in which the Commission can extend the qualifying period.

⁵ AD1-4; AD1B-1.

⁶ *Department of Employment and Social Development Act*, ss 57(1)(a) and 57(2).

day.⁷ The Claimant's application to the Appeal Division then became due 30 days after that, so on January 11, 2019. Instead, however, the Tribunal received the Claimant's application on May 27, 2019.

[13] I find, therefore, that the Claimant missed the deadline for filing her application to the Appeal Division. Her application is less than a year late, however, meaning that I have the power to grant an extension of time in this case. Before doing so, however, I must first decide whether the Claimant meets the relevant legal test.

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

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

[15] I weighed four factors when deciding whether to grant an extension of time in this case:⁸

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

[16] The Claimant does not have to satisfy all four factors; the most important consideration is that the interests of justice be served.⁹

[17] I can deal with the first three factors briefly:

- a) I am not aware of evidence demonstrating the Claimant's continuing intention to pursue her appeal;

⁷ Section 19(1)(c) of the *Social Security Tribunal Regulations* allows me to make this assumption.

⁸ These factors were set out by the Federal Court in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.

⁹ *Canada (Attorney General) v Larkman*, 2012 FCA 204.

- b) The Claimant did provide a reasonable explanation for her delay. In particular, the Claimant's appeal is late because of injuries that she suffered in a fall, along with several other health issues; and
- c) Given the brief delay and the availability of relevant documents, I see no obvious reason why the Commission's ability to respond to the appeal would be unduly affected by allowing the extension of time.

[18] As a result, the last two factors weigh in favour of granting an extension of time. However, I find the fourth factor to be the most important. Critically, the Claimant has not shown that she has an arguable case on appeal.

[19] When deciding whether the Claimant had an arguable case on appeal, I focused 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 considered 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?

[20] In spite of a specific request from the Tribunal, the Claimant did not frame her appeal along these lines.¹⁰ Instead, the Claimant asked for more weeks of EI regular benefits because of her dire need and sympathetic circumstances. She also argued that her qualifying period should be extended, and should not be just the 52 weeks immediately before her November 2017 application date.

[21] As mentioned above, the Commission agreed to antedate the Claimant's application. As a result, the qualifying period it used was from February 2016 to February 2017 (and not from November 2016 to November 2017). Before making this change, the Commission had decided

¹⁰ See the Tribunal's letter to the Claimant dated June 6, 2019.

that the Claimant was not eligible for EI benefits at all. So, this was an important change that favoured the Claimant.

[22] However, both the Commission and the General Division concluded that the Claimant did not fit into any of the categories needed to extend her qualifying period beyond 52 weeks. The Claimant did not point to any error in this critical part of the General Division decision and none are immediately obvious to me. Indeed, the Claimant's dire need and sympathetic circumstances are not factors that the General Division could consider when reaching its decision.

[23] In addition to the Claimant's arguments, I also 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.¹¹

[24] As a result, the Claimant does not have an arguable case on appeal.

[25] Overall, therefore, the four factors above are somewhat balanced. 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 is bound to fail.

[26] 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 particularly important in this case too.¹²

[27] 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 her appeal to move forward.

¹¹ *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

¹² *McCann v Canada (Attorney General)*, 2016 FC 878; *Maqsood v Canada (Attorney General)*, 2011 FCA 309.

CONCLUSION

[28] The EI Act provides temporary relief to people who find themselves out of work through no fault of their own. Unfortunately, the needs of the Claimant are greater than what the EI system can provide. I sincerely hope that she manages to find the help that she needs elsewhere.

[29] Although I sympathize greatly with the Claimant's circumstances, I have concluded that I cannot allow the extension of time that she needs for her file to move forward.

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

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	Z. S., self-represented
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Relevant Sections of the Law

Department of Employment and Social Development Act

Appeal — time limit

57 (1) An application for leave to appeal must be made to the Appeal Division in the prescribed form and manner and within,

(a) in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant; and

(b) in the case of a decision made by the Income Security Section, 90 days after the day on which the decision is communicated to the appellant.

Extension

(2) The Appeal Division may allow further time within which an application for leave to appeal is to be made, 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.

Grounds of appeal

58 (1) The only grounds of appeal are that

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division 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.

Social Security Tribunal Regulations

When decisions deemed communicated

19 (1) A decision made under subsection 53(1), 54(1), 58(3), 59(1) or 66(1) of the Act is deemed to have been communicated to a party

[...]

(c) if sent by facsimile, email or other electronic means, the next business day after the day on which it is transmitted.

Employment Insurance Act

Qualifying period

8 (1) Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

- (a) the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and
- (b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

Extension of qualifying period

(2) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

- (a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy;
- (b) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;
- (c) receiving assistance under employment benefits; or
- (d) receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

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Benefits

12 (1) If a benefit period has been established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to the maximums established by this section.

General maximum

(2) The maximum number of weeks for which benefits may be paid in a benefit period because of a reason other than those mentioned in subsection (3) shall be determined in accordance with the table in Schedule I by reference to the regional rate of unemployment that applies to the claimant and the number of hours of insurable employment of the claimant in their qualifying period.