



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. N. v Canada Employment Insurance Commission*, 2019 SST 764

Tribunal File Number: AD-19-441

BETWEEN:

S. N.

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 15, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] S. N. is the Claimant in this case. He established a claim for Employment Insurance (EI) regular benefits in January 2012. Based on the Claimant's bi-weekly reports, the Canada Employment Insurance Commission then paid him 17 weeks of EI benefits.

[3] Following an investigation, however, the Commission concluded that that the Claimant had failed to declare that he was receiving EI benefits and earnings from employment at the same time. As a result, the Commission determined that it had overpaid the Claimant by \$8,941. The Commission also imposed a penalty and issued a notice of violation against the Claimant.

[4] On October 18, 2013, the Claimant appealed the Commission's decision to the Tribunal's General Division. After several adjournments, the General Division held a videoconference hearing on March 25, 2014, but the Claimant did not attend. The General Division dismissed the appeal the next day. The Claimant now wants to appeal the General Division decision, but his application to the Appeal Division appears to be late.

[5] As a result, I must now decide whether the Claimant's application to the Appeal Division is, in fact, late and whether I can extend the time for the Claimant to bring his appeal. Unfortunately for the Claimant, I have concluded that I have no power to grant an extension of time in this case. These are the reasons for my decision.

ISSUES

[6] As part of this decision, I asked and answered the following questions:

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

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

[7] Yes, the Claimant filed his application to the Appeal Division late.

[8] The Claimant's application to the Appeal Division was due within 30 days of when he received the General Division decision.¹

[9] In this case, the Tribunal sent the General Division decision to the Claimant by mail on March 27, 2014. As a result, section 19(1)(a) of the *Social Security Tribunal Regulations* (SST Regulations) deems that the Claimant received the General Division decision 10 days later: on Monday, April 7, 2014.

[10] The Claimant's application to the Appeal Division was due, therefore, on May 7, 2014. Instead, however, the Tribunal received it on June 19, 2019, over five years late.²

[11] The Claimant seems to assert that he never received the General Division decision.³ In my view, the Claimant's assertion cannot override the deeming provision in the SST Regulations.

[12] In particular, the Tribunal sent the General Division decision to the Claimant's address on X in Edmonton. The Claimant now says that he moved out of that address on January 10, 2014.⁴ This seems highly unlikely, however, since the Claimant confirmed to the Tribunal on February 11, 2014, that this was indeed his correct address.⁵ As an aside, I note that the SST Regulations oblige parties to notify the Tribunal immediately of any change in their contact information.⁶

[13] In addition, the Tribunal appears to have had trouble sending letters to the Claimant's old address. However, Canada Post did not return any items, including the General Division decision, to the Tribunal after it started using the Claimant's new address on X in Edmonton.

¹ Section 57(1)(a) of the *Department of Employment and Social Development Act* establishes this time limit.

² AD1.

³ AD3-1.

⁴ AD3-1.

⁵ GD8.

⁶ Section 6 of the SST Regulations sets out this obligation.

[14] The additional information provided by the Claimant is difficult to follow. He has provided evidence to show that he was in hospital on the day of his General Division hearing.⁷ He also claims to have been told in April 2015 that he could appeal to the Tribunal.⁸ Finally, he asserts that he has been going to Service Canada offices since September 2015 and waiting months for answers.⁹

[15] However, none of this suggests that the Claimant was unaware of the General Division decision, nor does it come close to explaining why he filed his application to the Appeal Division over five years late.

[16] In my view, therefore, there is a lack of credible evidence to displace the presumption that the Claimant received the General Division decision on April 7, 2014.

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

[17] No, I do not have the power to grant an extension of time in this case.

[18] I only have the powers that the *Department of Employment and Social Development Act* (DESD Act) gives me. For the purposes of this case, section 57(2) defines the limits of my powers. More specifically, section 57(2) of the DESD Act makes very clear that I can only extend the time for filing an application to the Appeal Division when that application is less than a year late.

[19] Since the Claimant's application to the Appeal Division is over five years late, I have no power to grant the extension of time that he needs.

CONCLUSION

[20] Although I sympathize with the Claimant's circumstances, I have concluded that I cannot allow the extension of time that he needs for his file to move forward.

⁷ AD1-8.

⁸ AD3-1.

⁹ AD3-1; AD1-6.

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

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	S. N., 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.

Social Security Tribunal Regulations

Change in contact information

6 A party must file with the Tribunal a notice of any change in their contact information without delay.

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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

(a) if sent by ordinary mail, 10 days after the day on which it is mailed to the party;