



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. L. v Canada Employment Insurance Commission*, 2020 SST 38

Tribunal File Number: AD-20-10

BETWEEN:

**K. L.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

---

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

---

Decision on Request for Extension of Time and Janet Lew  
Leave to Appeal by:

Date of Decision: January 22, 2020

## DECISION AND REASONS

### DECISION

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

[2] Leave to appeal is refused.

### OVERVIEW

[3] The Applicant, K. L. (Claimant), is seeking leave to appeal the General Division's decision. Leave to appeal is the first step of the appeal process. It means that an applicant has to get permission from the Appeal Division before they can move on to the next and final stage of the appeal process. To be able to move on, the appeal has to have a reasonable chance of success. This is the same thing as an arguable case.<sup>1</sup>

[4] The General Division determined that the Claimant was dismissed from his employment because of aggressive arguments with his co-workers and with a customer. As a result, he was disqualified from receiving Employment Insurance benefits. The Claimant argues that the General Division was not fair in its process.

[5] I have to be satisfied that the appeal has a reasonable chance of success before I grant leave to appeal. But first off, I have to decide whether the Claimant filed his application to the Appeal Division on time. If not, then I have to decide whether to extend the time for filing the application.

[6] For the reasons that follow, I am refusing to extend the time for filing and refusing leave to appeal.

### ISSUES

[7] The issues are:

- (a) Did the Claimant file his Application to the Appeal Division on time?

---

<sup>1</sup> This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

- (b) If not, should I exercise my discretion and extend the time for filing the Application to the Appeal Division?
- (c) If I extend the time for filing, is there an arguable case that the General Division process was unfair?

## ANALYSIS

### (a) Did the Claimant file his Application to the Appeal Division on time?

[8] No. I find that the Claimant did not file his application to the Appeal Division on time.

[9] In the case of a decision made by the General Division - Employment Insurance section, a claimant has to file an application for leave to appeal to the Appeal Division within 30 days after the day on which he received the General Division's decision.<sup>2</sup>

[10] The Claimant does not say when he received the General Division's decision, but I note from the hearing file that the Social Security Tribunal sent a copy of the decision to him by email on July 8, 2019. The decision is deemed to have been received on July 9, 2019.<sup>3</sup> The Claimant therefore had until August 9, 2019 to file an application to the Appeal Division. However, he did not file an application to the Appeal Division until approximately six months later, on January 6, 2020. He was clearly late.

### (b) Should I extend the time for filing the application to the Appeal Division?

[11] I have some discretion to extend the time to a party to file an application to the Appeal Division. However, a party is not allowed to make application more than one year after the day on which they received the General Division's decision.<sup>4</sup> The Claimant filed his application within a year, so I may consider whether to extend the time for filing.

---

<sup>2</sup> See subsection 57(1)(a) of the *Department of Employment and Social Development Act* (DESDA).

<sup>3</sup> Under subsection 19(1)(c) of the *Social Security Tribunal Regulations*, the decision is deemed to have been communicated to the Claimant the next business day after which it was transmitted.

<sup>4</sup> See subsection 57(2) of the DESDA.

[12] The Federal Court of Appeal has said that in deciding whether to grant an extension of time to file an application for leave to appeal, the overriding consideration is the interests of justice.<sup>5</sup> The Federal Court of Appeal has also listed some of the relevant factors to consider when deciding whether to grant an extension of time:

- there is an arguable case on appeal or some potential merit to the application;
- there are special circumstances or a reasonable explanation for the delay;
- the delay is excessive;
- the respondent will be prejudiced if the extension is granted; and
- whether the party had a continuing intention to pursue the application.

[13] The General Division issued its decision on July 6, 2019. The Claimant filed his application to the Appeal Division on January 6, 2020. The delay involved is moderate but the Commission is unlikely to face any prejudice by any extension.

[14] The Claimant explains that he was late because he was employed during the summer and fall of 2019. He contacted Service Canada regarding a new Employment Insurance claim. It was then that he learned that he could re-open his old claim. This led him to file an application with the Appeal Division. This does not show that the Claimant had a continuing intention throughout the period of delay. I also do not find the explanation reasonable.

[15] Generally, these considerations alone would not serve as a bar to granting an extension. In my view, in determining whether it is in the interests of justice for me to extend the time for filing, generally I would assign greater weight to whether there is an arguable case, in the absence of any other special circumstances. For an arguable case, claimants have to show that there was one of the types of errors listed in subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA). The types of errors are:

1. The General Division process was unfair.

---

<sup>5</sup> See *X (Re)*, 2014 FCA 249; *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

2. The General Division did not decide an issue that it should have decided. Or, it decided something that it did not have the power to decide.
3. The General Division made an error of law when making its decision.
4. The General Division based its decision on an important error of fact.

[16] The Claimant says that he has an arguable case. He argues that the General Division decision was “not done in fairness”<sup>6</sup> because the General Division should have investigated what happened at his workplace. He denies that he was at fault for what happened at his workplace and says the General Division should have looked into the some of the incidents that occurred.

[17] The General Division is a fully independent and impartial decision-making body. The General Division has a duty to ensure that the process is fair and that the parties have a full and fair opportunity to present their cases. It has no business conducting any investigations or collecting any evidence on behalf of any of the parties. It is not an investigative body. It must remain at arm’s length from the parties at all times to retain its impartiality.

[18] If the Claimant wanted the General Division to know the full extent of what had happened at his workplace, he was responsible for bringing forth whatever evidence was necessary to support his case.

[19] In any event, I do not know what other evidence the Claimant hoped to rely upon to support his case. The General Division noted the Claimant’s evidence that there were no other witnesses to the incident that resulted in the Claimant’s dismissal.

[20] The General Division simply preferred the employer’s statements to the Commission to the Claimant’s evidence regarding the incident. The General Division found that the employer’s description of the Claimant’s demeanour during the incident was consistent with the Claimant’s own description of how he interacted with his colleagues on a small handful of occasions. The General Division determined that misconduct arose because the Claimant argued with and was

---

<sup>6</sup> See Claimant’s Application to the Appeal Division filed on January 6, 2020, at AD1-7.

aggressive towards a customer, and the Claimant was aware that his behaviour could lead to dismissal.

[21] The General Division did not consider who started or who was at fault for any arguments that the Claimant had with his colleagues. It was irrelevant who was at fault. The General Division did not base its decision on who was at fault for any of the arguments, including the one with the customer. The General Division was concerned with how the Claimant reacted to situations. He retaliated by yelling and swearing.

[22] Finally, I have reviewed the underlying record. I do not see that the General Division erred in law, whether or not the error appears on the record. I also do not see any sign that it failed to properly account for any of the evidence before it when it considered whether his conduct amounted to misconduct.

[23] For these reasons, I am not satisfied that the Claimant has an arguable case or that the appeal has a reasonable chance of success. As such, I see no basis to extend the time for filing the application for leave to appeal.

**(c) Is there an arguable case that the General Division process was unfair?**

[24] Even if I had granted an extension of time, I would not have granted leave to appeal. As I explained above, I do not see that the Claimant has an arguable case.

[25] The Claimant argues that the General Division was unfair because it did not investigate and see who was at fault for the incident that led to his dismissal, or for any workplace incidents. The General Division's role does not extend to conducting investigations. It decides matters based on the evidence before it.

[26] The Claimant suggests that the process was unfair, but I do not see any evidence that the General Division failed to observe a principle of natural justice. There is no evidence to suggest that the General Division member failed to give the Claimant adequate notice of the hearing. There is no evidence that there were any issues over the disclosure of documents, the manner in which the General Division conducted the hearing, or any other procedure that affected the

Claimant's right to be heard or to answer the case. As well, there is no issue either that the General Division member was biased or had prejudged the appeal.

[27] I am not satisfied that the appeal has a reasonable chance of success.

**CONCLUSION**

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

Janet Lew  
Member, Appeal Division

REPRESENTATIVE:	K. L., Self-represented
-----------------	-------------------------