



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. H. v Canada Employment Insurance Commission*, 2020 SST 39

Tribunal File Number: AD-20-16

BETWEEN:

E. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Janet Lew

Date of Decision: January 22, 2020

DECISION AND REASONS

DECISION

[1] I am turning down the Applicant's request for an extension of time to apply for leave to appeal.

OVERVIEW

[2] The Applicant, E. H. (Claimant), is seeking leave to appeal the General Division's decision of April 13, 2018. 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 appeals process. To be able to move on, the appeal has to have a reasonable chance of success.

[3] The General Division decided that the Respondent, the Canada Employment Insurance Commission (Commission) acted judicially when it refused to give the Claimant an extension of time to ask the Commission to reconsider its July 2015 decision. The Claimant says that he is appealing the General Division's decision because he does not have enough hours of insurable employment to qualify for Employment Insurance benefits. There is no suggestion that the General Division made any mistakes.

[4] Before I can consider whether to grant leave to appeal, first, I have to decide whether the Claimant filed his application for leave to appeal with the Appeal Division on time. If he did not file his application on time, then I have to decide whether the law will let me extend the deadline for filing the Claimant's application for leave to appeal with the Appeal Division.

[5] For the following reasons, I find that the Claimant was late when he filed his application requesting leave to appeal. I also find that the Claimant does not have a good argument for me to give him an extension of time to file his application for leave to appeal. I am turning down the Claimant's request for an extension of time.

ISSUES

[6] The issues are:

- (a) Did the Claimant file his application to the Appeal Division on time?
- (b) If not, does the law let me extend the deadline for filing the appeal?

ANALYSIS

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

[7] No. The Claimant did not file his application on time.

[8] 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 on April 13, 2018. One assumes that he received the General Division's decision on April 23, 2018.¹

[9] The Claimant had 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.² Because one assumes that the Claimant received the General Division's decision on April 23, 2018, the Claimant had until May 23, 2018 to an application to the Appeal Division. However, he did not file an application to the Appeal Division until approximately six months later, on December 17, 2019. He was clearly late.

- (b) Does the law let me extend the deadline for filing the application for leave to appeal?**

[10] I have some discretion to extend the time to a party to file an application to the Appeal Division. In deciding whether to grant an extension of time to file an application for leave to

¹ Under subsection 19(1)(a) of the *Social Security Tribunal Regulations*, the decision is deemed to have been communicated to the Claimant 10 days after the day on which the Social Security Tribunal sent the decision to him by ordinary mail.

² See subsection 57(1)(a) of the *Department of Employment and Social Development Act*.

appeal, the Federal Court of Appeal has said that the overriding factor to consider is the interests of justice.³ The Federal Court of Appeal⁴ has also listed other factors to consider:

- 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.

[11] The delay involved here is not that long. The Commission is unlikely to face any prejudice by any extension.

[12] The Claimant does not say whether he had a continuing intention to file an appeal or application for leave to appeal. He also does not give any excuse for his delay. These two factors alone would not prevent me from granting an extension.

[13] In my view, in determining whether it is in the interests of justice to extend the time for filing, generally greater weight should be given to whether there is an arguable case, in the absence of any other special circumstances.

[14] An arguable case is the same thing as a reasonable chance of success.⁵ This is a relatively low bar because applicants do not have to prove their case. They simply 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.
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 See *X (Re)*, 2014 FCA 249; *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

⁴ *Ibid.*

⁵ This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

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.

[15] The Claimant says that he has an arguable case. The Claimant says he is missing only a few hours to qualify for Employment Insurance benefits.

[16] Unfortunately for the Claimant, this argument does not fall into one of the types of errors listed in subsection 58(1) of the DESDA. It does not show, for instance, that the process might have been unfair, or that the General Division made a legal or factual mistake. It does not give him an arguable case. On top of that, there is no way for me to relax the strict requirements of the *Employment Insurance Act* and somehow reduce the amount of hours the Claimant needs to qualify for benefits.

[17] I find that the Claimant does not have a good argument for his appeal that could win on appeal. He has not given any explanation for his delay in filing his application for leave to appeal to the Appeal Division. He has not shown a continuing intention. For these reasons, I see no justification to extend the deadline for filing the application for leave to appeal to the Appeal Division.

[18] 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. The General Division properly noted that the *Reconsideration Request Regulations* set out the factors that the Commission had to consider when it decided whether to grant an extension.

[19] The General Division looked at whether the Commission considered the factors set out in the *Reconsideration Request Regulations*. I do not see any sign that the General Division failed to properly account for any of the evidence before it when it considered whether the Commission acted judicially when it refused to give more time to the Claimant to ask the Commission to reconsider its decision.

[20] The General Division noted that the Commission did not consider one of the factors (whether there would be any prejudice). However, because all four criteria had to be satisfied, it was unnecessary to decide any remaining criteria if the Claimant failed to meet even just one of

the criteria. That was the case here where the General Division found that the Commission had acted judicially when it concluded that the Claimant did not have a reasonable explanation for the delay and that he had not demonstrated a continuing intention to ask for a reconsideration.

CONCLUSION

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

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	E. H., Self-represented
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