



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CF v Canada Employment Insurance Commission*, 2020 SST 792

Tribunal File Number: AD-20-770

BETWEEN:

C. F.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Pierre Lafontaine

Date of Decision: September 21, 2020

DECISION AND REASONS

DECISION

[1] The Appeal Division refuses to grant an extension of time to file an application for permission to appeal.

OVERVIEW

[2] The Applicant, C. F. (Claimant), applied for employment insurance sickness benefits on September 12, 2019. She asked that the Canada Employment Insurance Commission (Commission) treat her application as if she had applied on January 18, 2019. The Commission refused her request because it determined that she did not meet the requirements to have her application backdated. The Claimant requested a reconsideration of this decision, and the Commission maintained its initial decision. The Claimant appealed to the General Division of the Tribunal.

[3] The General Division found that the Claimant did not prove that she had good cause for the delay in applying for benefits throughout the entire period of the delay. The General Division concluded that it could not backdate the application to January 2019.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division.

[5] In support of her application for permission to appeal, the Claimant puts forward that she is entitled to her sickness benefits. She always receives benefits when she goes to the hospital. She puts forward that the Commission told her she could apply after her lay-off or sickness in June or July. She is currently unemployed. The Claimant puts forward that she was late in filing her application for leave to appeal because she either forgot or thought she had already filed her application.

[6] The Tribunal sent a letter to the Claimant requesting that she explain in detail her grounds of appeal in accordance with section 58 of the *Department of Employment and Social Development Act* (DESD Act).

[7] The Claimant replied that she is entitled to her weeks because she was sick and not working. Because of the refusal, she suffered a loss of income. She had to borrow money and she is still paying it back.

[8] I must decide whether I will allow the late request and, if so, whether I grant leave to appeal.

[9] I refuse to allow the Claimant an extension of time to file an application for leave to appeal.

ISSUES

[10] Did the Claimant file her application for leave to appeal within 30 days after she received communication of the General Division decision?

[11] Should an extension of time be granted to the Claimant so that she can file her application for leave to appeal?

[12] If so, in her grounds of appeal, did the Claimant raise a reviewable error made by the General Division that gives the appeal a reasonable chance of success?

ANALYSIS

[13] Section 58(1) of the DESD Act specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

(a) the General Division failed to observe a principal of natural justice or otherwise acted beyond or refused 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 had made in a perverse or capricious manner or without regard for the material before it.

[14] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be

met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[15] Therefore, before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Issue no 1: Did the Claimant file her application for leave to appeal within 30 days after she received communication of the General Division decision?

[16] No. The Claimant filed her application for leave to appeal on September 9, 2020. She received communication of the General Division decision on June 11, 2020.

Issue no 2: Should an extension of time be granted to the Claimant so that she can file her application for leave to appeal?

[17] In deciding whether to grant an extension of time to file an application for leave to appeal to the Appeal Division, the over-riding consideration is whether the interest of justice favors granting the extension.¹

[18] Relevant factors to consider are whether:

- (a) there is an arguable case on appeal;
- (b) special circumstances justify the delay in filing the notice of appeal;
- (c) the delay is excessive; and
- (d) the Commission will be prejudiced if the extension is granted.

¹ *X (Re), 2014 FCA 249, Grewal c Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[19] Although the Commission will not be prejudiced by the delay to file the application for leave to appeal, I find that the delay of almost three months before filing the application to be excessive. The Claimant participated at the hearing before the General Division on June 8, 2020. The decision was communicated to her three (3) days after the hearing, on June 11, 2020, with clear instructions on how to appeal to the Appeal Division.

[20] The Claimant puts forward that she either forgot to appeal or thought she had filed her appeal but did not seek confirmation. I find that the Claimant has not raised any special circumstances that prevented her from filing a leave to appeal application within 30 days.

[21] Furthermore, the Tribunal is not convinced that the Claimant has an arguable case or that the appeal has a reasonable chance of success.

[22] In support of her application for permission to appeal, the Claimant puts forward that she is entitled to her sickness benefits. She always receives her benefits when she goes to the hospital. She puts forward that the Commission told her she could apply after her lay-off or sickness in June or July. She is currently unemployed.

[23] To establish good cause under section 10(4) of the *Employment Insurance Act* (EI Act), a claimant must be able to show that she did what a reasonable person in her situation would have done to satisfy herself as to her rights and obligations under the EI Act.

[24] The General Division found that the Claimant did not prove good cause because she did not act a reasonable and prudent person in similar circumstances for the entire delay period. It found that a reasonable and prudent person in the Claimant's circumstances would have made inquiries with the Commission about her rights and obligations soon after her separation of employment or shortly after returning to work.

[25] The Federal Court of Appeal has established that a claimant as an obligation to make prompt inquiries with the Commission to verify eligibility. The Federal Court of

Appeal has also established that ignorance of the process, even coupled with good faith, does not constitute good cause under the EI Act.

[26] The undisputed evidence before the General Division shows no effort on the Claimant's part to determine her entitlement or to verify her obligations under the EI Act until August 2019.

[27] The Claimant, in her leave to appeal application, would essentially like to represent her case to the Appeal Division. Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing, where a party can represent its evidence and hope for a new favorable outcome.

[28] After considering all the above relevant factors, I am not convinced that the interest of justice favors granting the extension.

CONCLUSION

[29] The Tribunal refuses to grant an extension of time to file an application for permission to appeal.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	C. F., Self-represented
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