



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *GG v Canada Employment Insurance Commission*, 2021 SST 102

Tribunal File Number: AD-21-78

BETWEEN:

G. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time and Stephen Bergen
Leave to Appeal by:

Date of Decision: March 17, 2021

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, G. G. (Claimant), applied for regular Employment Insurance benefits in October of 2015. The Commission decided that the Claimant was not entitled to benefits because he had not shown that he was capable of and available for work, and unable to obtain suitable employment.¹ It found that the reason the Claimant did not return to work was that he did not provide his employer with a medical clearance and an employee assessment medical.² According to the Commission, the Claimant knew that the employer required these documents before it could allow him to return.

[3] The Commission did not change this decision after the Claimant asked it to reconsider. The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal. At his first General Division hearing, the Claimant asked for an adjournment because his witness was not available. He did not appear on November 8, 2016, the next date scheduled for his General Division hearing. However, he requested an adjournment about 10 days later.

[4] The General Division denied the Claimant's second adjournment request. On January 26, 2017, the General Division dismissed the appeal based on its review of the information on the record. It confirmed that the Claimant was not entitled to benefits because he had not proven his availability to work.

[5] On March 8, 2021, the Claimant applied for leave (permission) to appeal the General Division decision to the Appeal Division.

¹ See section 18(1)(a) of the *Employment Insurance Act* (EI Act).

² GD3-20.

ISSUES

[6] Is the Claimant out of time to appeal to the Appeal Division?

[7] If the Claimant is out of time, can the Appeal Division consider the Claimant's application for leave to appeal?

[8] If the Appeal Division allows the late application to proceed, does the Claimant have a reasonable chance of success in his appeal?

ANALYSIS

Issue 1: Is the appeal out of time?

[9] Section 57(1) of the *Department of Employment and Social Development Act* (DESD Act) states that a party must apply to the Appeal Division for leave to appeal within 30 days of the day on which the General Division communicated its decision to the Claimant.

[10] The General Division decision is dated January 26, 2017, and was sent to him by ordinary mail under cover of a letter dated the same day. Section 19(1) of the *Social Security Regulations* (Regulations) states that a decision under section 54(1) of the DESD Act (the General Division decision) is deemed to have been communicated 10 days after the day on which it is mailed.

[11] The Claimant provided reasons for his late appeal to the Appeal Division, but he did not claim that he did not receive the General Division decision, or that he did not receive it in a timely manner.

[12] In the absence of evidence of the date that the Claimant received the decision, I accept that the General Division communicated the decision to him on February 5, 2017, which is 10 days after the date that the General Division mailed it out. The Claimant's application would have been in time if he had filed it within 30 days of February 5, 2017 (by March 7, 2017).

[13] The Claimant's appeal is late. He did not file the appeal within 30 days as required by section 57(1) of the DESD Act.

Issue 2: Can I consider the Claimant's late appeal?

[14] Even though an application may be late, section 57(2) of the DESD Act states that I may allow additional time for a claimant to file his or appeal. This is within my discretion. This the reason that the application for leave asks claimants to explain why their appeal is late.

[15] However, Section 57(2) also states that "in no case" may an application be made more than a year after the date the decision was communicated. That means I do not have the ability to allow any appeal that is more than a year out of time.

[16] I have found that the General Division communicated its decision to the Claimant on February 5, 2017. One year from February 5, 2017, would have been February 5, 2018. The Appeal Division did not receive the Claimant's application for leave to appeal until March 8, 2021. Therefore, his appeal is more than a year out of time. In fact, it is more than four years out of time.

[17] I cannot grant the Claimant an extension of time or allow his leave to appeal application to proceed.

Issue 3: Does the appeal have a reasonable chance of success?

[18] Because I have found that the Claimant's application was late and that I cannot proceed with his appeal, there is no need for me to consider whether he would have had a reasonable chance of success.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	G. G., Self-represented
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