



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *KO v Canada Employment Insurance Commission*, 2021 SST 105

Tribunal File Numbers: AD-21-61

BETWEEN:

K. O.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: March 18, 2021

DECISION AND REASONS

DECISION

[1] The Application to the Appeal Division is refused because the appeal does not have a reasonable chance of success.

OVERVIEW

[2] The Claimant K. O. is appealing the General Division's decision of February 24, 2021 (Tribunal File Number: GE-21-282). The General Division found that the Claimant was late and out of time when he filed an appeal to the General Division. The Claimant was trying to appeal part of the reconsideration decision of the Canada Employment Insurance Commission. (The Claimant was largely successful on reconsideration because the Commission waived a monetary penalty. But, interest on the unpaid debt still applied. The Claimant had a debt arising out of an overpayment of Employment Insurance benefits.)

[3] Because the Claimant was late in filing an appeal, the General Division refused to hear the appeal. The Claimant argues that the General Division made several mistakes. He also argues that the General Division member was biased and acted unfairly.

[4] An appeal at the Appeal Division is a two-step process. At this first step, an applicant has to get permission from the Appeal Division before they can move on to the next and final step. This means they have to show that the appeal has a reasonable chance of success. Having a reasonable chance of success is the same thing as having an arguable case.¹

[5] I am not satisfied that the Claimant's appeal has a reasonable chance of success. Therefore, I am not granting permission to the Claimant to move ahead with his appeal. So, the application to the Appeal Division is refused.

¹ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

ISSUE

[6] Is there an arguable case that the General Division member was biased, acted unfairly, made a legal error, or based its decision on an important factual error by rendering a decision without considering the merits of his appeal?

ANALYSIS

[7] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the General Division made an error under section 58(1) of the *Department of Employment and Social Development Act* (DESDA). Types of errors are where the General Division:

- (a) Failed to make sure the process was fair;
- (b) Failed to decide an issue that it should have decided, or decided in issue that it should not have decided;
- (c) Made an error of law; or
- (d) Based its decision on an important factual error (perverse, capricious, or without regard for the evidence).

[8] The Claimant does not dispute the fact that his appeal at the General Division was late. But, he argues that the process was unfair, that the General Division member was biased and made jurisdictional and important factual errors.

[9] In particular, the Claimant alleges that the member had already decided the outcome of his appeal without even considering the merits of his case. He argues that the General Division should have considered why he was late when he filed his appeals.

[10] The General Division did not mention why the Claimant was late with his appeal. The Claimant had explained in his Notice of Appeal² that he had been unaware that interest was accruing on his debt.

² Notice of Appeal, at GD02.

[11] When he received the reconsideration decision, no one informed him that interest would apply to unpaid debts. On top of that, Canada Revenue Agency suspended collection of any debts during the pandemic. So, the Claimant first learned about the interest only after CRA resumed collections. He claims that if he had known about the interest earlier, he would have filed an appeal on time.

[12] Unfortunately for the Claimant, section 52(2) of the DESDA operates as a complete bar to any appeals if more than one year has passed since the Commission's reconsideration decision was communicated to him. The General Division did not have any option but to dismiss his appeal because the Claimant filed it after the one-year deadline.³ Any excuse he had was irrelevant and did not change the outcome of the proceedings. The General Division correctly determined that the Claimant's appeal could not go ahead because the Claimant had not brought it on time.

[13] However, the General Division cited the wrong regulation on interest. The General Division should have referred to section 56.1(3) of the *Employment Insurance Regulations* instead of *Treasury Board Regulations*. However, this error does not change the outcome because section 56.1(3) of the *Employment Insurance Regulations* allows interest to accrue on debts.

[14] The General Division also correctly determined that it did not have any jurisdiction to waive or reduce the amount of any interest owing on any debts.

[15] That said, the *Employment Insurance Regulations* allow the Commission to waive or reduce interest if the accrual of interest on a debt would lead to "undue hardship" to the Claimant.⁴ If the Claimant wants to pursue this, he would have to prove "undue hardship" to the Commission.

[16] Finally, I note that the Social Security Tribunal wrote to the Claimant on March 12, 2021. The Tribunal suggested that the Claimant could consider contacting CRA [**CRA's Debt Management Call Centre at 1-866-864-5823**] to ask about repayment terms. In other words, he

³ *Fazal v Canada (Attorney General)*, 2016 FC 487.

⁴ Section 56.1(8) of the *Employment Insurance Regulations*.

could perhaps get a repayment plan. The Claimant could also ask CRA about the possibility that it might write off or reduce the amount of his debt, along with any interest.

CONCLUSION

[17] The Claimant does not have an arguable case in his appeal. The Application to the Appeal Division is refused. But, as I have noted above, there may be some options for the Claimant to try to reduce or waive the interest.

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	K. O., Self-represented
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