



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *SA v Canada Employment Insurance Commission*, 2021 SST 145

Tribunal File Number: AD-21-54

BETWEEN:

**S. A.**

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: April 9, 2021

## **DECISION AND REASONS**

### **DECISION**

[1] I am granting the request for an extension of time to file an application to the Appeal Division.

[2] But, I am refusing the application to the Appeal Division because the Claimant S. A. does not have an arguable case.

### **OVERVIEW**

[3] The Claimant is appealing the General Division's decision of January 6, 2021.

[4] The General Division found that the Claimant stopped working in April 2018. It found that she was therefore late when she applied for Employment Insurance benefits in October 2020. It decided that she did not have good cause for the delay in applying for benefits. It also concluded that she did not have enough hours of insurable employment to establish a claim.

[5] The Claimant waited to get a Record of Employment from her employer before she filed an application for Employment Insurance benefits. She claims that she was unaware that she could have applied for Employment Insurance benefits without a Record of Employment.

[6] The Claimant left her employment because of an injury. She continues to have severe chronic pain. She developed depression. She is undergoing ongoing medical treatment. She needs some assistance, as she has not had any income since she left her job.

[7] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success. However, before I can even consider whether the appeal has a reasonable chance of success, I have to decide whether the Claimant filed her application on time. If she did not file her application on time, then I have to decide whether I should extend the time for filing the application.

[8] I find that the Claimant was late when she filed her application to the Appeal Division. The delay is very short so I am prepared to grant an extension of time to the Claimant for her to

file an application to the Appeal Division. However, because I find that the Claimant does not have an arguable case, I am refusing her application to the Appeal Division.

## ISSUES

[9] The issues are:

- i. Did the Claimant file her application to the Appeal Division on time?
- ii. If not, should I give an extension to the Claimant so her application to the Appeal Division is on time?
- iii. If I grant an extension of time and then consider whether to let the Claimant move ahead with her appeal, does the appeal have a reasonable chance of success?

## ANALYSIS

### **i. Did the Claimant file her application to the Appeal Division on time?**

[10] No. The Claimant did not file her application to the Appeal Division on time.

[11] If the Claimant did not file her application to the Appeal Division on time, then she needs to get an extension of time. If I do not grant an extension of time, then this ends the Claimant's appeal of the General Division's decision.

[12] The General Division issued its decision on January 6, 2021. The Social Security Tribunal sent a copy of the decision by email to both the Claimant and to her representative, her spouse. The decision is deemed to have been communicated to the Claimant on January 7, 2021.<sup>1</sup> She does not say whether she received the General Division's decision on or about January 7, 2021.

---

<sup>1</sup> Under section 19(1)(c) of the *Social Security Tribunal Regulations*, a decision is deemed to have been communicated to a party (c) if sent by facsimile, email or other electronic means, the next business day after the day on which it is transmitted.

[13] Because the decision is deemed to have been communicated to the Claimant on January 7, 2021, she had until February 6, 2021, to file an application to the Appeal Division.<sup>2</sup> However, the Claimant did not file an application until February 21, 2021. So, she was about two weeks late when she filed an application to the Appeal Division.

**ii. Should I grant an extension to the Claimant so her application to the Appeal Division is on time?**

[14] I have the authority to give the Claimant extra time to file an application to the Appeal Division.<sup>3</sup> However, in deciding whether to give extra time, I must consider certain factors,<sup>4</sup> including whether:

- 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 was excessive;
- the Respondent, the Canada Employment Insurance Commission, will be prejudiced if I grant an extension; and
- the Claimant had a continuing intention to pursue the application.<sup>5</sup>

[15] But, a claimant does not have to meet all these factors. The Federal Court of Appeal has said that, above all, I have to consider the interests of justice.<sup>6</sup>

[16] Some of these factors favour the Claimant. The delay involved is very short. And, the Commission is unlikely to face any prejudice if I grant an extension of time.

---

<sup>2</sup> Under section 57(1)(a) of the *Department of Employment and Social Development Act* (DESDA), in a case of a decision made by the Employment Insurance Section, an applicant has to file an application to the Appeal Division within 30 days after the day on which they received the General Division's decision.

<sup>3</sup> Section 57(2) of the DESDA.

<sup>4</sup> *X (Re)*, 2014 FCA 249; *Canada (Attorney General) v Larkman*, 2012 FCA 204.

<sup>5</sup> *Ibid.* See also *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.

<sup>6</sup> *Larkman*, *supra*.

[17] Given the very short delay, I find it is in the interests of justice to grant an extension of time, even though the Claimant did not explain why she was late nor state whether she had a continuing intention to pursue her application.

[18] That still leaves the issue of whether the Claimant has an arguable case. Usually I would give this factor the greatest consideration when considering whether to grant an extension. If the Claimant does not have an arguable case, there is no point in going ahead with the appeal. But, as I have said, the delay here is very short, so it is in the interests of justice to consider the Claimant's application to the Appeal Division.

[19] I will address the issue of whether there is an arguable case in the context of the Claimant's application to the Appeal Division.

**iii. Does the appeal have a reasonable chance of success?**

[20] Having a reasonable chance of success is the same thing as having an arguable case.<sup>7</sup>

[21] For an arguable case to exist, the General Division had to have made an error under section 58(1) of the *Department of Employment and Social Development Act* (DESDA). Types of errors under section 58(1) of the DESDA include 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 an 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 material before it).

[22] The Claimant does not address any of these errors in her application to the Appeal Division. But, she notes that she has been unable to work since her injury. She notes that her employer took more than one year to provide her with a Record of Employment. She wishes that

---

<sup>7</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

she had known that she could have applied for Employment Insurance benefits without a Record of Employment. She is having a difficult time.

[23] The Tribunal wrote to the Claimant, asking for more information.<sup>8</sup> It asked her to describe any errors the General Division might have made.

[24] In response, the Claimant confirmed that she did not receive a Record of Employment from her employer until August 2020.<sup>9</sup> She also notes that she has not had any income or any help from her employer.

[25] There is no suggestion from the Claimant that the General Division made any important factual or legal errors, or that she somehow did not get a fair hearing. (There may be a discrepancy over the date when the Claimant received the Record of Employment, but nothing turns on this difference. The Claimant was late with filing her application, no matter whether she received her Record of Employment in May 2020 or in August 2020.)

[26] It seems that the Claimant is looking for a reassessment of her claim. But, an appeal to the Appeal Division is not a rehearing. Even if there was a reassessment of her claim, the fact that the Claimant was unaware that she did not have to wait for a Record of Employment before filing an application for benefits is not a valid basis to backdate her claim. In other words, waiting for a Record of Employment does not constitute “good cause” for the purposes of the *Employment Insurance Act*.<sup>10</sup>

[27] I have reviewed the underlying record to make sure that the General Division did not misconstrue or mischaracterize any important evidence. The General Division’s findings are consistent with the evidence before it. I also do not see any errors of law, either on the face of the record or otherwise, for the Claimant’s factual circumstances.

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

---

<sup>8</sup> Tribunal’s letters dated March 1 and March 30, 2021.

<sup>9</sup> The General Division found that the Claimant’s employer issued a Record of Employment in May 2020, at paras.14 and 19. The Record of Employment indicates that the employer issued it on or about May 19, 2020 (see GD3-16).

<sup>10</sup> *Blanchette v Canada (Attorney General)*, 2021 FC 115.

**CONCLUSION**

[29] The Claimant's delay in filing an application to the Appeal Division is very short, so I am granting an extension.

[30] However, the Claimant does not have an arguable case, so I am refusing her application to the Appeal Division.

Janet Lew  
Member, Appeal Division

REPRESENTATIVE:	Ahmad Jaweed Munir, for the Applicant
-----------------	---------------------------------------