



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *TB v Canada Employment Insurance Commission*, 2021 SST 327

Tribunal File Number: GE-21-490

BETWEEN:

**T. B.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Amanda Pezzutto

DATE OF DECISION: May 14, 2021

## REASONS AND DECISION

### OVERVIEW

[1] T. B. is the Claimant. He applied for Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) made a reconsideration decision about whether he qualified for benefits. The Commission sent him the decision letter on December 1, 2020.

[2] The Claimant had 30 days to file an appeal of the Commission's reconsideration decision with the Tribunal.<sup>1</sup> This means that he had until December 31, 2020 to file his appeal. The Tribunal received his appeal on March 24, 2021. This is beyond the 30-day limit. I must decide whether to allow the Claimant an extension of time to appeal.<sup>2</sup>

[3] I have decided that I will not accept the late appeal. These reasons will explain why.

### ANALYSIS

[4] There are four factors I must weigh and consider as I decide whether to allow more time for the Claimant to appeal. I must consider whether the following:

- Did the Claimant have an ongoing intention to appeal?
- Does he have an arguable case?
- Does he have a reasonable explanation for his delay?
- Would allowing an extension of time would cause prejudice, or harm, to other interested parties?<sup>3</sup>

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<sup>1</sup> Subsection 52(1) of the *Department of Employment and Social Development Act*.

<sup>2</sup> Subsection 52(2) of the *Department of Employment and Social Development Act* permits the Tribunal to grant an extension of time to appeal.

<sup>3</sup> The Federal Court of Appeal describes these four factors in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883.

[5] Each of these factors might be different from one case to another. I can give these factors different weight depending on the Claimant's particular circumstances. Above all, I must consider what would best serve the interests of justice.<sup>4</sup>

**Does the Claimant have an arguable case?**

[6] I find that the Claimant does not have an arguable case. This is because he is trying to appeal the Commission's decisions before asking for a reconsideration.

[7] Having an arguable case is the same as deciding whether the appeal has a reasonable chance of success.<sup>5</sup> This means that I should consider whether the Claimant's appeal would have a reasonable chance of success if I were to hear the appeal.

[8] When the Claimant applied for EI benefits, the Commission originally decided that he did not have enough hours to qualify. The Claimant asked the Commission to reconsider this decision. He gave the Commission more information about his work. The Commission reviewed the new information and decided that the Claimant really did have enough hours to qualify for benefits. In other words, the reconsideration decision was in the Claimant's favour.

[9] After the Commission allowed the Claimant's reconsideration request, the Commission made decisions about the Claimant's entitlement to benefits while he was outside of Canada and his entitlement to benefits while he was in quarantine. The Commission decided that the Claimant was not entitled to benefits while he was out of Canada and while he was in quarantine.

[10] At the pre-hearing conference, the Claimant said that he was not trying to appeal the Commission's decision that he had enough hours to qualify for benefits. He agreed with the Commission's reconsideration decision. The Claimant said that he only wants to appeal the Commission's decisions about his entitlement to benefits while he was out of Canada and while he was in quarantine after he returned to Canada.

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<sup>4</sup> *Canada (Attorney General) v. Larkman*, 2012 FCA 204 and *Jama v. Canada (Attorney General)*, 2016 FC 1290.

<sup>5</sup> *Canada (Minister of Human Resources Development v. Hogervorst*, 2007 FCA 41 and *Fancy v. Canada (Minister of Social Development)*, 2010 FCA 63.

[11] The Commission says that it has not reconsidered these decisions. The Commission argues that the Tribunal has no jurisdiction to hear an appeal on the Claimant's entitlement to benefits while out of Canada and in quarantine.

[12] The Claimant agrees that there is no reconsideration on these decisions. He says he is frustrated because he feels like he is caught in a bureaucratic process.

[13] I understand that the Claimant is frustrated. However, I cannot skip the reconsideration step. I only have authority to hear an appeal of a reconsideration decision.<sup>6</sup> If there is no reconsideration decision, then I have no authority to step in and hear an appeal on that issue.

[14] I accept that the Commission has not yet done a reconsideration on the question of the Claimant's entitlement while out of Canada and while in quarantine. This means that I do not have any authority to make a decision on these issues. If I were to accept this late appeal, I would have to dismiss the appeal. This appeal has no reasonable chance of success and the Claimant does not have an arguable case.

**Has the Claimant shown an ongoing intention to pursue the appeal?**

[15] At the pre-hearing conference, the Claimant said that he did not want to appeal the Commission's reconsideration decision. He said that he agreed with the reconsideration decision because it meant that he had enough hours to qualify for benefits. He said he only decided to appeal to the Tribunal after the Commission made decisions about his entitlement while he was outside of Canada and while he was in quarantine.

[16] I find that this means that the Claimant did not have a continuing intention to pursue an appeal throughout the entire period of his delay. He did not want to appeal the reconsideration decision. He only decided to bring an appeal after the Commission made new decisions.

[17] The Claimant has not shown that he had a continuing intention to pursue an appeal.

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<sup>6</sup> Section 113 of the *Employment Insurance Act*

**Does the Claimant have a reasonable explanation for his delay?**

[18] The Claimant says that he delayed filing an appeal because he did not want to appeal right away. He agreed with the reconsideration decision. He only decided to appeal after the Commission made new decisions.

[19] In other words, the Claimant delayed filing an appeal because he did not want to appeal the reconsideration decision. This is not a reasonable explanation for the delay.

**Would there be harm (or prejudice) to the other parties?**

[20] Neither the Commission nor the Claimant have made any arguments on this factor. The Commission says it has not yet made a reconsideration decision about the Claimant's entitlement to benefits. However, it seems clear that the Commission has records and evidence relating to its decisions. I do not think that it would cause any prejudice to any of the parties if I were to accept this late appeal.

**Would it be in the interests of justice to accept the late appeal?**

[21] I do not think it would serve the interests of justice if I were to accept this late appeal. The Claimant agrees with the Commission's reconsideration decision. He agrees that he has enough hours to qualify for benefits. He does not want me to make a decision about this issue. It would not be in the interests of justice if I accepted the late appeal and re-examined the Commission's decision about the Claimant's hours.

[22] The Claimant disagrees with the Commission's decisions about his entitlement while out of Canada and while in quarantine. I do not have the authority to hear an appeal on these issues and so an appeal on these issues has no reasonable chance of success. I think this is the most important factor and I give it a lot of weight. It would not be in the interests of justice to accept a late appeal that has no reasonable chance of success.

[23] The Claimant does not have a reasonable explanation for his delay and he has not shown a continuing intention to pursue an appeal. This is because he did not want to appeal the Commission's reconsideration decision. He only decided to bring an appeal to the Tribunal after

the Commission made new decisions about his entitlement. It would not be in the interests of justice to allow a late appeal when the Claimant does not meet these two factors.

[24] There might not be any prejudice to the Commission if I allow this late appeal. But I think this factor is the least important of all the factors I have to consider. I do not think this factor outweighs the others.

[25] When I consider all four factors together, I find that it is not in the interests of justice to allow this late appeal. So, I will not accept this late appeal. This means that this appeal will not continue to a hearing.

[26] The Claimant can ask the Commission to reconsider the decisions about his entitlement to benefits. If the Commission makes new reconsideration decisions, the Claimant will have the right to appeal these decisions to the Tribunal.

## **CONCLUSION**

[27] The Claimant's appeal is late. I will not accept the late appeal.

Amanda Pezzutto  
Member, General Division – Employment Insurance