



[TRANSLATION]

Citation: *SL v Canada Employment Insurance Commission*, 2021 SST 455

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: S. L.

Representative: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
May 14, 2021 (GE-21-498)

Tribunal member: Pierre Lafontaine

Decision date: August 30, 2021

File number: AD-21-264

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits. A benefit period was established effective June 3, 2018. The Respondent (Commission) decided that the Claimant had failed to report his earnings with two employers. The Commission imposed a penalty of \$4,618.00 for 11 false statements and issued a notice of “very serious violation.”

[3] The Claimant requested a reconsideration of this decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the penalty should be upheld, since the Claimant knowingly made false statements. However, it did cancel the notice of violation.

[5] The Claimant is now asking for leave to appeal the General Division decision to the Appeal Division. He argues that he did not knowingly make false or misleading statements because he was a victim of hacking. He submits that the General Division could not find that he made false or misleading statements based on the fact that the benefits stayed in his bank account despite the hacking.

[6] A letter was sent to the Claimant asking him to explain his late application. It also asked him to give detailed reasons for his appeal.

[7] In response to the Tribunal's request, the Claimant explains that he filed his application within the required time. He argues that he did not need to make

false statements because he had enough cash in his bank account. He reiterates that he was a victim of hacking.

[8] I have to decide whether to allow the late application and, if so, whether to grant leave to appeal.

[9] I am granting the extension of time to file an application for leave to appeal. However, I am refusing the application for leave to appeal, since the Claimant's appeal has no reasonable chance of success.

Issues

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

[11] If so, does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Preliminary remarks

[12] In support of the application for leave to appeal, the Claimant is introducing new documents that were not before the General Division.¹

[13] It is well established that the Appeal Division does not accept new evidence, except in rare cases, since its role is limited by the law.²

[14] An application to rescind or amend the General Division decision is the appropriate procedure for trying to introduce new evidence.³

¹ See AD1B-8 and AD1B-9.

² See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act); and *Canada (Attorney General) v O'Keefe*, 2016 FC 503.

³ See section 66 of the DESD Act.

[15] I will therefore decide this application for leave to appeal based on the evidence that was before the General Division.

Analysis

Issue 1: Should an extension of time be granted so that the Claimant can file his application for leave to appeal?

[16] Yes. After receiving the General Division decision dated May 14, 2021, the Claimant filed his application for leave to appeal on August 10, 2021. I note that the Claimant tried to submit documents to the Tribunal after the General Division decision. These were returned to him on July 8, 2021. He then filed his application for leave to appeal to the Appeal Division.

[17] Given the circumstances of the case, I find that it is in the interest of justice to grant the Claimant an extension of time to file his application for leave to appeal. The delay is not excessive, and the extension does not cause any prejudice to the Commission.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[18] In support of his application for leave to appeal, the Claimant argues that he did not need to make false statements because he had enough cash in his bank account. He reiterates that he was a victim of hacking. He argues that the person's failure to steal benefits from him does not make him guilty of making false or misleading statements.

[19] The General Division had to decide, on a balance of probabilities, whether the Commission was justified in imposing a penalty on the Claimant for knowingly making false or misleading statements for the period from August 12, 2018, to January 5, 2019.⁴

⁴ See section 38 of the *Employment Insurance Act*.

[20] Parliament's only requirement for imposing a penalty is that of knowingly—that is, with full knowledge of the facts—making a false or misleading statement. As the General Division pointed out, the absence of the intent to defraud is therefore not relevant.

[21] At the General Division, the Claimant argued that he had been a victim of hacking and identify theft. He submitted that he had not completed his reports during the period from August 12, 2018, to January 5, 2019.

[22] The General Division found that the Claimant had knowingly made false or misleading statements by indicating that he had not worked or received any earnings during the period from August 12, 2018, to January 5, 2019, despite his statements that he had not completed his reports for this period.

[23] The General Division did not accept the Claimant's explanations that, after he was hacked, another person had allegedly completed his reports for the period in question.

[24] The General Division accepted the fact that the Claimant had failed to tell the Commission that he had resumed working and receiving earnings as of August 14, 2018.

[25] The General Division did not find credible the Claimant's statement that he had not checked his bank account for several months, even though he was receiving both earnings from his employers and EI benefits.

[26] The General Division considered that the Claimant had failed to report the personal information or identity theft to the authorities or his credit card company.

[27] I note that the General Division correctly stated the applicable legal test for penalties. It applied this test to the facts the Claimant raised and looked at whether the Claimant, after considering all the circumstances, had knowingly made false or misleading statements.

[28] Unfortunately, for the Claimant, the appeal to the Appeal Division is not an appeal where a new hearing is held—that is, where a party can present their evidence again and hope for a favourable decision.

[29] I note that, despite my specific request, the Claimant has not raised any issue of law, fact, or jurisdiction that could lead to the setting aside of the decision under review.

[30] On review of the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

[31] Leave to appeal is refused.

Conclusion

[32] The extension of time to file an application for leave to appeal is granted.

[33] Leave to appeal is refused.

Pierre Lafontaine
Member, Appeal Division