



[TRANSLATION]

Citation: *SV v Canada Employment Insurance Commission*, 2021 SST 518

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: S. V.
Representative: Stéphane Harvey

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
June 2, 2021 (GE-21-520, GE-21-521, GE-21-522,
GE-21-523)

Tribunal member: Pierre Lafontaine

Decision date: September 23, 2021
File number: AD-21-304, AD-21-305, AD-21-306, AD-21-307

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits starting November 22, 2015; November 20, 2016; December 10, 2017; and December 9, 2018. The Respondent, the Canada Employment Insurance Commission (Commission), reconsidered the Claimant's claims for benefits and found that he had not had an interruption of earnings for the claims of November 20, 2016; December 10, 2017; and December 9, 2018.

[3] The Commission also found that the Claimant had not correctly reported the earnings he received from his employer for the weeks of January 3, 2016; March 19 and 26, 2016; and May 6, 2018. The Claimant asked for a reconsideration, but the Commission upheld the initial decisions. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant used a cell phone and a vehicle whose bills are reimbursed or paid in whole or in part by the company year-round, even when he is unemployed. It found that the benefits received were earnings that prevented an interruption of earnings and the establishment of a benefit period.

[5] The Claimant is seeking leave to appeal. He submits that the General Division did not base its decision on the evidence. He argues that the facts in support of the decision are the opposite of the facts in evidence.

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

[7] I am of the view that the Claimant should be refused an extension of time to apply for leave to appeal.

ISSUES

[8] Should an extension of time be granted so that the Claimant can apply for leave to appeal?

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

Analysis

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

[10] When deciding whether to grant an extension of time to file an application for leave to appeal, I must determine whether granting this extension is in the interests of justice.

[11] The relevant factors to consider are whether:

- a) the appeal discloses an arguable case
- b) special circumstances justify the delay in filing the notice of appeal
- c) the delay is excessive
- d) the Commission will be prejudiced if the extension is granted

[12] Although the Commission would not be prejudiced by extending the time to file the application for leave to appeal, I find excessive the three-and-a-half-month period before the Claimant's application for leave to appeal was filed. The Claimant's representative explains that he did not file the application until September 14, 2021, since his office was closed during the summer from July 27 to August 16, 2021. In my view, these are not special circumstances that would have prevented the Claimant from filing his application on time.

[13] The General Division made its decision on June 2, 2021. It was communicated to the representative and the Claimant by email on June 3, 2021. Two months passed before the representative's office closed for the summer. Nothing prevented the representative or the Claimant from filing the application on time.

[14] Furthermore, I am not satisfied that the Claimant has an arguable case or that the appeal has a reasonable chance of success.

[15] At the General Division, the Claimant did not dispute the reconsideration period or the Commission's allocation of the earnings. However, he disputed the Commission's finding that there had been no interruption of earnings for seven consecutive days for the benefit periods.

[16] At the General Division hearing, the Claimant said that he did not receive company benefits during his benefit periods. He said that he paid for his cell phone himself, that he used it for personal use only, and that he did not use the company truck when he was unemployed.

[17] The General Division accepted the initial statement made by the company administrator, the Claimant's mother, who told the Commission that the mobile service allowing the Claimant to use his personal cell phone was paid by the company year-round. She also said that the company provided the Claimant with a vehicle and paid the cost of the lease, registration, insurance, and gas year-round.¹

[18] The General Division also accepted the Claimant's initial statement that he used his cell phone and the vehicle year-round for work and personal use.²

¹ GD3-32.

² GD3-173.

[19] The General Division placed more weight on the administrator's and the Claimant's initial statements. It was not persuaded by the Claimant's contradictory testimony at the hearing.

[20] In the face of this overwhelming evidence, the division found that the Claimant used a cell phone and a vehicle whose bills are reimbursed or paid in whole or in part by the company year-round, even when he is unemployed. It found that the benefits received were earnings that prevented an interruption of earnings and the establishment of a benefit period.

[21] I reiterate that an appeal before the Appeal Division is not a new hearing—that is, where a party can present their evidence again and hope for a favourable decision. The Appeal Division's powers are limited by the law.³

[22] In my view, the Claimant does not raise a reviewable error by the General Division based on which the appeal might succeed.

[23] After considering the above factors, I am not satisfied that granting an extension of time is in the interests of justice.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division

³ Section 58(1) of the *Department of Employment and Social Development Act*.