



Citation: *AK v Canada Employment Insurance Commission*, 2021 SST 522

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: A. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 8, 2021
(GE-20-2396)

Tribunal member: Janet Lew

Decision date: September 27, 2021

File number: AD-21-310

Decision

[1] I am refusing the request by the Applicant A. K. (Claimant) for an extension of time to apply for leave (permission) to appeal. The appeal at the Appeal Division will not proceed.

[2] The Claimant has new medical evidence. She claims that, if the General Division had this information, it would have changed the outcome of her appeal at the General Division. The Appeal Division does not consider new evidence of this nature. If the Claimant wants the Social Security Tribunal to consider new evidence, she may make an application with the General Division to rescind or amend (cancel or change) its decision. However, there is a deadline by which to apply.

Overview

[3] The Claimant is appealing the General Division's decision. The General Division found that the Claimant's election of extended parental benefits was irrevocable. So, she was unable to change her election to standard parental benefits.

[4] The Claimant states that she now has new medical evidence that may change the General Division decision. She bases her appeal to the Appeal Division on this new evidence. Otherwise, she does not say the General Division made any errors.¹

[5] I have to decide whether the appeal has a reasonable chance of success.² Having a reasonable chance of success is the same thing as having an arguable case.³ 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.

[6] If the Claimant did not file her application on time, then I have to decide whether I should extend the time for filing the application. This involves examining several factors,

¹ See Claimant's email dated September 24, 2021, at AD3.

² Under section 58(2) of the *Department of Employment and Social Development Act* (DESDA), I am required to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

³ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

including whether the Claimant has an arguable case. If I do not extend the time for filing, that ends the Claimant's appeal.

[7] I find that the Claimant was late when she filed her application to the Appeal Division. I also find that the Claimant does not have an arguable case. Because of this, I am not granting an extension of time to the Claimant for her to file an application to the Appeal Division. This ends the Claimant's appeal at the Appeal Division.

[8] The Claimant still has the option of filing an application to the General Division to cancel or change its decision.

Issues

[9] The issues are as follows:

- a) Did the Claimant file her application to the Appeal Division on time?
- b) If not, should I give the Claimant an extension of time to file her application?
- c) If I give the Claimant 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

The application was late

[10] The Claimant did not file her application to the Appeal Division on time.

[11] The General Division issued its decision on January 8, 2021. The Social Security Tribunal sent a copy of the decision by email to the Claimant on January 11, 2021. The General Division decision is deemed to have been communicated to the Claimant on January 12, 2021.⁴

⁴ 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.

[12] The Claimant had until February 11, 2021 to file an application to the Appeal Division to be on time.⁵ However, she did not file an application until September 18, 2021. She was more than seven months late when she filed her application.

[13] Because the Claimant did not file her application to the Appeal Division on time, she needs to get an extension of time. If the Appeal Division does not give the Claimant an extension of time, this ends the Claimant's appeal of the General Division decision.

I am not extending the time for filing the application

[14] I may give a claimant extra time to file an application if they are late.⁶ However, when deciding whether to grant an extension of time, I have to consider certain factors,⁷ including whether:

- a) The Claimant had a continuing intention to pursue the application;
- b) The Claimant has a reasonable explanation for her delay;
- c) The delay is excessive;
- d) There is any prejudice to the other party;⁸ and
- e) The application discloses an arguable case.

[15] The importance of each factor may be different depending on the case. Indeed, a claimant does not have to meet all these factors. More than anything else, I have to consider whether granting an extension serves the interests of justice.⁹

[16] The Claimant explains that she was late filing an application because it took a long time for her to see medical specialists and finally get documentation confirming a

⁵ Under section 57(1)(a) of the DESDA, 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.

⁶ See section 57(2) of the DESDA.

⁷ *X (Re)*, 2014 FCA 249; *Canada (Attorney General) v Larkman*, 2012 FCA 204.

⁸ The Federal Court set out this test in *Canada (Minister of Human Resources Development) v Gattellaro*, [2005 FC 833](#).

⁹ The Federal Court of Appeal outlined this test in *Canada (Attorney General) v Larkman*, [2012 FCA 204](#).

medical condition. She says that medical documentation may change the General Division decision.

[17] The Claimant is mistaken in thinking the Appeal Division can consider this new evidence. Even so, I find that she has a reasonable explanation for the delay. She thought she could get new evidence, so waited to get it.

[18] The Respondent, the Canada Employment Insurance Commission, is unlikely to face any significant prejudice if I grant an extension of time.

[19] Two factors favour the Claimant. But, the Claimant's delay is not minor. As well, there is no evidence that she had a continuing intention to pursue an application to the Appeal Division.

[20] On top of that, the Claimant does not have an arguable case. An arguable case exists if there is a certain type of error.¹⁰ These errors are about whether 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 (The error has to be perverse, capricious, or without regard for the material before it).

[21] The Claimant freely acknowledges that she does not have an arguable case. She says "there is nothing that the [General Division] had done in error ... it was all on [her] end."¹¹

¹⁰ See section 58(1) of the DESDA.

¹¹ See Claimant's email to the Tribunal on September 24, 2021, at AD3-1.

[22] If the Claimant does not have an arguable case (or, in other words, if her appeal does not have a reasonable chance of success), then there is little point in granting an extension of time. I am not granting an extension of time.

I am not giving the Claimant permission to appeal

[23] I am not giving the Claimant more time to file an application to the Appeal Division. So, it is unnecessary for me to consider whether to give permission for the Claimant to move ahead with her appeal. I would have refused permission anyway because she does not have an arguable case.

The Claimant's option

[24] The Claimant still has the option of filing an application to the General Division to cancel or change its decision,¹² based on the new evidence that she says would have changed the outcome at the General Division.

[25] The Claimant should note that there is a one-year deadline to apply, from when she got the General Division decision on January 11, 2021. She has little more than three months to apply. If she is late, there is no chance to get an extension. If the Claimant wants to pursue an application to the General Division to rescind or amend its decision, she should file one as soon as possible.

Conclusion

[26] The Claimant does not have an arguable case, so I am refusing to give her an extension of time. This ends the Claimant's appeal.

Janet Lew
Member, Appeal Division

¹² This falls under section 66 of the DESDA.