



Citation: *MS v Canada Employment Insurance Commission*, 2022 SST 107

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: M. S.
Representative: Wasim Kadri

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 26, 2021
(GE-21-1040)

Tribunal member: Janet Lew

Decision date: March 4, 2022

File number: AD-22-113

Decision

[1] An extension of time to apply for leave (permission) to appeal is refused. This ends the appeal.

Overview

[2] The Applicant, M. S. (Claimant), is appealing the General Division decision.

[3] The General Division found that the Claimant was capable of and available for work from July 15, 2018, to February 2, 2019. This disentitled him from receiving Employment Insurance regular benefits. As he had already received benefits, this meant he had an overpayment of benefits that he is expected to repay.

[4] The Claimant argues that the General Division made a jurisdictional error because it failed to decide something that he says it should have decided. In particular, he says the General Division should have decided to waive the overpayment.

[5] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.²

[6] There is also the issue about whether the Claimant filed his application to the Appeal Division on time. If the Claimant was late with his application, then he has to get an extension of time. He has to get an extension of time before I can even consider his application for leave to appeal. If he does not get an extension of time, this ends his appeal.

¹ Under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if am satisfied, "that the appeal has no reasonable chance of success."

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

Issues

[7] The issues are:

- i. Was the Claimant late when he filed his application to the Appeal Division?
- ii. If so, should I grant an extension of time?

Analysis

The application was late

[8] The Claimant did not file his application on time. He had 30 days to file after getting the General Division decision.³ He says that he received the General Division decision on August 26, 2021. So, he had to file an application by no later than September 27, 2021.

[9] The Claimant filed his application on February 13, 2022. This was more than 30 days after he got the General Division decision.

[10] Because the Claimant did not file his application on time, he has to get an extension of time. If the Appeal Division does not grant an extension of time, this will mean that the Appeal Division will not consider the Claimant's application for leave to appeal. This would also end the Claimant's appeal of the General Division decision.

I am not extending the time for filing the application

[11] The Appeal Division may grant an extension to file if an application is late by not more than one year.⁴

[12] When deciding whether to grant an extension of time, I have to consider certain factors.⁵ These factors include whether:

³ See section 57(1)(a) of the DESD Act. The section says that an application for leave to appeal must be made to the Appeal Division 30 days after the day on which the decision made by the Employment Insurance Section is communicated to the appellant.

⁴ See section 57(2) of the DESD Act.

⁵ See *X(Re)*, 2014 FCA 249; *Canada (Attorney General) v Larkman*, 2012 FCA 204.

- 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 (Commission) will be prejudiced if I grant an extension and
- The Claimant had a continuing intention to pursue the application⁶

[13] The importance of each factor could be different, depending on the facts of the case. A claimant does not have to meet all of these factors. The most important consideration is whether the interests of justice are served by granting an extension.⁷

[14] The delay is not that long. The Commission is unlikely to face any prejudice if I grant an extension of time.

[15] The Claimant explains that he was late because of medical issues. He is seeking psychiatric help for those issues. He is also under medication. Because of his medical state and his medications, he says he has no sense of time.⁸ The Claimant has a reasonable explanation for his delay. His explanation could suggest a continuing intention to pursue an application.

[16] These factors favour the Claimant, but they are not decisive. Of greater importance is whether the Claimant has an arguable case. If he does not have an arguable case, it is against the interests of justice to grant an extension.

[17] The Claimant does not contest any of the General Division findings. He does not argue that the General Division made any legal errors. He claims that he has an arguable case because the General Division failed to exercise its jurisdiction.

⁶ *X (Re) and Larkman*. See also *Canada (Minister of Human Resources Development v Gattellaro*, 2005 FC 883.

⁷ The Federal Court of Appeal outlined this test in *Larkman*.

⁸ See Claimant's Application to the Appeal Division – Employment Insurance, at AD1-6.

[18] The Claimant argues that the General Division should have waived the overpayment. After all, he made a mistake by applying for Employment Insurance, when he should have applied for other benefits. Now, he has to rely on his family for financial support. He is unable to repay the overpayment.

[19] The Claimant does not have an arguable case that the General Division failed to exercise its jurisdiction when none exists. The General Division does not have any power or authority to waive or write off any portion of the overpayment. So, it did not make any jurisdictional or legal errors when it declined to waive or lower the amount of the overpayment.

[20] As the Claimant does not have an arguable case, I am not granting an extension of time.

The Claimant's options

[21] The Claimant says that he relies on his family's support and is unable to repay the overpayment. In terms of any potential relief, his options are:

1. He can ask the Commission to consider writing off the debt because of undue hardship. If the Claimant does not like the Commission's response, his option then is to appeal to the Federal Court, or
2. He can contact the Debt Management Call Centre at 1-866-864-5823 about writing off the debt or about a repayment schedule.

[22] Often, the Commission refers claimants to the Debt Management Centre to help determine whether they are facing financial hardship.

Conclusion

[23] An extension of time is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division