Citation: *AG v Canada Employment Insurance Commission*, 2022 SST 403

Social Security Tribunal of Canada
Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant:	A. G.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 25, 2022 (GE-21-2509)

Tribunal member:	Melanie Petrunia
Decision date:	May 23, 2022
File number:	AD-22-202

Decision

[1] An extension of time to apply for leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] In May 2021, the Applicant (Claimant) applied for and received Employment Insurance (EI) fishing benefits. A benefit period was established as of May 2, 2021.

[3] In the summer of 2021, the Claimant worked in non-fishing employment. He applied for regular EI benefits on September 13, 2021 believing that he had accumulated enough hours to qualify.

[4] The Respondent (Commission) decided that the Claimant didn't have enough hours to qualify for regular benefits. He could not establish a new benefit period so the Commission would not cancel his May benefit period.

[5] The Claimant appealed to the Tribunal's General Division. The General Division dismissed the appeal and agreed with the Commission that the Claimant cannot cancel his May 2021 benefit period because he did not have enough hours to establish a new benefit period.

[6] The Claimant asks for leave to appeal this decision to the General Division. He argues that the General Division made an important error of fact by not giving enough consideration to the measures brought in by the government to address the COVID-19 pandemic.

[7] The Claimant's application for leave to appeal is late. I must decide whether to grant the Claimant an extension of time.

[8] The Claimant's argument about the General Division's error does not have a reasonable chance of success. Without a reasonable chance of success on appeal, it is not in the interests of justice to allow the extension of time. The appeal will not go ahead.

Issues

[9] The issues are:

a) Was the Claimant's application to the Appeal Division late?

b) If so, should I extend the time for filing the application?

Analysis

The application was late

[10] The General Division decision is dated February 25, 2022. The decision was sent to him by e-mail on that day and was received by the Claimant.[1] He had 30 days to file an application for leave to appeal.

[11] The application for leave to appeal was received on March 30, 2022. This was more than 30 days after he got the General Division decision. This means that the application was late.

I am not extending the time for filing the application

[12] The Appeal Division may grant an extension to file if an application is late by not more than one year.[2]

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

- The Claimant had a continuing intention to pursue the application;
- There is a reasonable explanation for the delay;
- There is prejudice to the other party if I grant the extension; and

[1] Telephone log dated February 25, 2022 states that the Claimant spoke with a Tribunal representative who reviewed the email with him and ensured he located the attached decision.
[2] See section 57(2) of the DESD Act.

- There is an arguable case on appeal[3]

[14] The importance of each factor may be different depending on the case. Above all, I have to consider if the interests of justice are served by granting the extension.[4]

[15] In this case, the delay was very short. The Commission is unlikely to face any prejudice if I grant an extension of time.

[16] The Claimant contacted the Tribunal during the 30 days after receiving the General Division decision to request a paper copy of the application for leave to appeal. He said that he was having difficulty with the link to the electronic form.[5] He also contacted the Tribunal to say that he had mailed his application, and again to confirm whether it had been received.[6]

[17] I am satisfied that the Claimant had a reasonable explanation for the delay and a continuing intention to appeal.

[18] These factors support granting an extension of time. However, an important factor is whether the Claimant has an arguable case. An arguable case is a case that has a reasonable chance of success on appeal. If he does not have an arguable case, it is against the interests of justice to grant an extension.

[19] The Claimant argues that the General Division did not seem to give enough consideration to the unique measures introduced in early 2020 to deal with the pandemic. He says that the measures were new to all Canadians and put into place very quickly. He argues that Claimants, Service Canada and the Tribunal were not ready for these new measures and, as a result, many mistakes were made.[7]

[20] The Claimant does not raise any specific factual errors that the General Division relied on. The General Division properly considered that the Claimant needed 420 hours

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[3] See *X(Re)*, 2014 FCA 249; *Canada (Attorney General) v Larkman*, 2012 FCA 204 (*Larkman*). See also *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 833.
[4] The Federal Court of Appeal outlined this test in *Larkman*, 2012 FCA 204.
[5] Telephone log dated February 28, 2022.
[6] Telephone logs dated March 28 and April 5, 2022.
[7] See Claimant's email at AD1B-2.

in his qualifying period to qualify for regular benefits. It determined that the Claimant's qualifying period began May 2, 2021, which was the first day of his last benefit period. The qualifying period ran until September 11, 2021.

[21] The Claimant was deemed to have an additional 300 hours in his qualifying period as one of the temporary measures that was put into place to help people qualifying for regular benefits during the pandemic.[8] So, the Claimant needed to work 120 hours in his qualifying period. The General Division found that the Claimant did not have 120 hours in his qualifying period.[9]

[22] There is no arguable case that the General Division did not consider the unique temporary measures introduced because of the pandemic, or the potential for mistakes to be made. One of the temporary measures was the one-time credit of 300 hours, which the General Division took into account.

[23] The Claimant argued before the General Division that he was given conflicting and confusing advice about his entitlement to benefits. The General Division considered this argument and properly found that it had to apply the law, despite any incorrect advice the Claimant might have received.[10]

[24] There is no arguable case that the General Division relied on an important error of fact by not giving enough consideration to the unique temporary measures. I have also considered arguments not raised by the Claimant. There is no arguable case that the General Division made any errors of law, or exceeded or failed to exercise its jurisdiction. There is no arguable case that the General Division failed to provide a fair process.

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[8] See section 153.17 of the EI Act, and the General Division decision at paragraph 24.
[9] See General Division decision at paragraph 21.
[10] See General Division decision at paragraph 35.

[25] The Claimant does not have an arguable case, so I am not granting an extension of time.[11]

Conclusion

[26] An extension of time is refused. This means that the appeal will not go ahead.

Melanie Petrunia
Member, Appeal Division

[11] The Federal Court and Federal Court of Appeal have given particular weight to the arguable case factor, see for example *McCann v Canada (Attorney General)*, 2016 FC 878, and *Maqsood v Canada (Attorney General)*, 2011 FCA 309.