



Citation: *SL v Canada Employment Insurance Commission*, 2022 SST 774

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 13, 2022
(GE-22-1324)

Tribunal member: Neil Nawaz

Decision date: August 17, 2022

File number: AD-22-423

Decision

[1] Leave (permission) to appeal is refused. This appeal will not be going forward.

Overview

[2] The Claimant applied for Employment Insurance (EI) sickness benefits in May 2016. The Commission paid the benefits at first but then, a few months later, asked the Claimant for a doctor's note. The Claimant didn't provide a doctor's note, so the Commission decided that she wasn't entitled to EI sickness benefits. The Commission asked her to repay the benefits that she had received.

[3] Three years passed. On November 7, 2019, the Claimant asked the Commission to reconsider its decision. In a letter dated November 19, 2019, the Commission refused the request because it was late. The Commission didn't think the Claimant had a reasonable explanation for the delay.

[4] Another 2½ years passed. On April 8, 2022, the Claimant appealed the Commission's reconsideration refusal to the Social Security Tribunal (Tribunal). The Tribunal's General Division decided that an oral hearing was unnecessary and decided the appeal by reviewing the documents on the file.

[5] In its decision, the General Division found that the Commission had properly notified the Claimant of its reconsideration decision by way of its November 19, 2019, letter. It also found that, since the Claimant's appeal was more than one year late, it could not accept the Claimant's appeal.

[6] The Claimant is now seeking permission to appeal the General Division's decision to the Appeal Division. She argues that the General Division failed to follow the rules of procedural fairness. She insists that she submitted all required documentation in a timely manner.

[7] I have decided to refuse the Claimant permission to appeal because her appeal has no reasonable chance of success.

Issue

[8] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.¹

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.² At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.³ This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.⁴

[9] I had to decide whether any of the Claimant's reasons for appealing fell within one or more of the above-mentioned grounds of appeal and, if so, whether they raised an arguable case.

Analysis

[10] I have reviewed the record, and I see no arguable case on any ground of appeal.

[11] Under the law, an appeal to the General Division must be submitted to the Tribunal within 30 days after the day on which the Commission's reconsideration decision was communicated to the claimant.⁵ The General Division may allow further time to make the appeal, but in no case can it be made more than one year after the day on which the reconsideration decision was communicated to the claimant.⁶

¹ See *Department of Employment and Social Development Act* (DESDA), section 58(1).

² See DESDA, sections 56(1) and 58(3).

³ See DESDA, section 58(2).

⁴ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁵ See DESDA, section 52(1)(a).

⁶ See DESDA, section 52(2).

[12] In this case, the General Division found that the notice of appeal was submitted to the Tribunal more than one year after the Claimant received the Commission's reconsideration letter. I can't see an arguable case that the General Division committed an error in making this finding.

[13] The Claimant says that she has always filed her documents on time. However the General Division thought otherwise, and I see nothing to suggest it was wrong.

[14] The record indicates that the Commission sent its reconsideration decision letter to the Claimant at her listed address on November 19, 2019.⁷ Just over a week later, on November 27, 2019, the Claimant submitted another reconsideration request form listing the same address.⁸ On December 4, 2019, a Commission officer called the Claimant and told her that the Commission had already refused her reconsideration request and that her next recourse was an appeal to the Tribunal. That same day, the Commission mailed another letter to the Claimant at her listed address confirming the contents of the telephone conversation and enclosing a copy of the November 19, 2019, reconsideration letter.

[15] Based on this record, the General Division found that it likely that the Commission had communicated its reconsideration letter to the Claimant sometime in November or December 2019. I see no reason to second-guess this finding. The General Division reviewed the evidence and saw nothing to indicate that she had filed, or attempted to file, any document with either the Commission or the Tribunal until long after the 30-day "soft" and one-year "hard" deadlines.

[16] For appeals submitted more than one year after reconsideration, the law is strict and unambiguous. The governing legislation states that **in no case** may an appeal be brought more than one year after the reconsideration decision was communicated to a claimant. While extenuating circumstances may be considered for appeals that come after 30 days but within a year, the wording of the legislation all but eliminates scope for a decision-maker to exercise discretion once the year has elapsed. The Claimant's

⁷ See Commission's letter dated November 19, 2019, GD3-37

⁸ See Claimant's reconsideration request date stamped November 27, 2019, GD3-39

explanations for filing her appeal late are therefore rendered irrelevant, as are other factors, including the merits of her claim for benefits.

[17] It is unfortunate that missing a filing deadline may have cost the Claimant an opportunity to make an appeal, but the General Division was bound to follow the letter of the law, and so am I. The Claimant may regard this outcome as unfair, but I can only exercise the powers given to me under the Appeal Division's enabling legislation.⁹

Conclusion

[18] For the above reasons, I find that the appeal has no reasonable chance of success.

[19] Permission to appeal is refused.

Neil Nawaz
Member, Appeal Division

⁹ This principle is explained further in a case called *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.