



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *FR v Canada Employment Insurance Commission*, 2022 SST 605

Tribunal File Number: GE-22-1114

BETWEEN:

F. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

DATE OF DECISION: June 14, 2022

Decision

[1] The appeal will not proceed. The Appellant's (Claimant's) appeal is late. I am not giving her an extension of time because she doesn't have an arguable case.¹

Overview

[2] The Claimant applied for and received employment insurance benefits (EI regular benefits and EI Emergency Response Benefit (EI ERB)).

[3] After the Claimant received the benefits, the Canada Employment Insurance Commission (Commission) recalculated her weekly benefit rate and weeks of entitlement. The recalculations created an overpayment of benefits.

[4] The Claimant asked the Commission to reconsider its decisions, but the Commission maintained them. The Commission confirmed it was maintaining its decisions by letter dated February 4, 2022.²

[5] The Claimant appealed those decisions to the Social Security Tribunal on March 21, 2021, outside the 30-day time limit.

[6] I have to decide whether the Claimant's appeal was late, and if so, if I should give her an extension of time to appeal the Commission's decisions.³

Analysis

The appeal was late.

[7] The Claimant didn't say when she received the Commission's decision letter.⁴

[8] The decision letter is dated February 4, 2022.

¹ This is the main reason. I explain my other reasons in the Analysis section.

² This was a decision under section 112 of the *Employment Insurance Act*.

³ See section 52(1)(a) of the *Department of Employment and Social Development Act*.

⁴ This information was missing from the appeal form, and the Claimant didn't respond to my letter asking for this information.

[9] I find the Claimant received the decision letter on February 14, 2022. I allowed 10 days for the letter to arrive by regular mail. This is when the decision was communicated to her.

[10] The Claimant had until March 16, 2022, to file her appeal with the Tribunal. This date is 30 days from February 14, 2022.

[11] The Claimant filed her appeal on March 21, 2022.⁵ So she filed her appeal late.

Extension of time

[12] I have to decide whether to allow the Claimant more time to file her appeal.⁶ The most important consideration is whether she has an arguable case, and whether the interests of justice will be served by giving her more time.

[13] Because the Claimant hasn't provided any evidence or arguments that would allow me to grant her appeal, I find that she doesn't have an arguable case. I explain why below.

[14] I also considered that the Claimant hasn't explained what, if any, efforts she made to file her appeal before March 21, 2021. She hasn't said why her appeal was late. So I find that she has proven neither a continuing intention to pursue the appeal nor a reasonable explanation for the delay in doing so.

[15] I find that the Commission's interests will not be prejudiced given the short period of time that has lapsed since the reconsideration decision. The Commission has already provided their documents and submissions for the appeal, so it wouldn't be unduly affected by an extension of time to appeal.

⁵ This is the date on the email with the notice of appeal attached.

⁶ In deciding whether to allow further time to appeal, I considered and weighed the four factors set out in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883. Briefly, the four factors are: a continuing intention to appeal, a reasonable explanation for the delay, an arguable case and not prejudicial to other parties. But the overriding consideration is that the interests of justice be served. See *Canada (Attorney General) v Larkman*, 2012 FCA 204 and *Jama v Canada (Attorney General)*, 2016 FC 1290.

[16] I know the Claimant's appeal isn't very late. But it isn't in the interests of justice to grant her more time and schedule a hearing when she doesn't have an arguable case. It is in the interests of justice for the appeal to be dealt with as quickly as possible. This is especially so when the Claimant has other avenues it can pursue with the Commission.⁷

- No arguable case

[17] The Federal Court of Appeal says whether there is an arguable case at law is like having a reasonable chance of success.⁸

[18] The Claimant doesn't have an arguable case.

[19] The issues being appealed are:

- Weeks of entitlement to EI regular benefits
- Weeks of entitlement to EI ERB⁹
- Weekly benefit rate

[20] The Claimant argues that no one has explained when and how she was overpaid benefits. She says she works hard and doesn't needlessly rely on government benefits. She says that she will never ask for benefits again if I help her. She says she can't afford the repayment.

[21] The Claimant's appeal is bound to fail. She hasn't provided any evidence or made any arguments that would affect how many weeks of benefits she was entitled to receive, or what her weekly benefit rate should have been.¹⁰ There is no evidence to suggest that the Commission's decisions were contrary to the law, or were made incorrectly.

⁷ See paragraph 24.

⁸ See *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41) and *Fancy v. Canada (Minister of Social Development)*, 2010 FCA 63.

⁹ The decision letter says CERB, but it should have said EI ERB. See page GD4-7.

¹⁰ For her complete arguments, see page GD2-4.

Conclusion

[22] I am not giving the Claimant an extension of time. It is not in the interests of justice for the appeal to proceed because it has no reasonable chance of success.

- Options for the Claimant

[23] I strongly encourage the Claimant to contact the Commission as soon as possible to discuss:

- whether she is eligible for more weeks of EI ERB that could offset her overpayment ¹¹
- whether the antedate can be changed so she can benefit from the temporary measures that started on September 27, 2020, as it is unclear why an unbeneficial antedate to August 16, 2020, was granted ¹²
- the possibility of writing off any remaining overpayment.

[24] She could also talk to Canada Revenue Agency about affordable payment arrangements.

[25] For the foregoing reasons, the Claimant's appeal will not proceed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance

¹¹ See page GD4-12 where the Commission writes: "However, following resolution of the appeal, and while not legislatively bound to do so, the Commission agrees to review and determine whether any eligible weeks in the EI ERB period could be applied to offset the advance payment overpayment in this case."

¹² See page GD4-10 where the Commission writes: "Following the outcome of the claimant's appeal to the Social Security Tribunal, she might wish to contact the Commission and submit a request for reconsideration in regards to her antedate request, as it would be her first recourse." I confirm that I can't look at the antedate issue that seems to have created part of the overpayment until the Commission reconsiders its antedate decision. If the Claimant isn't satisfied with the Commission's response, she may appeal to the Tribunal. She should keep in mind the 30-day filing deadline.