



Citation: *AP v Canada Employment Insurance Commission*, 2022 SST 1248

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: A. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 12, 2022
(GE-22-1181)

Tribunal member: Melanie Petrunia

Decision date: November 11, 2022

File number: AD-22-701

Decision

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

Overview

[2] The Applicant, A. P. (Claimant), applied for employment insurance (EI) regular benefits and established a claim effective January 23, 2022. The Respondent, the Canada Employment Insurance Commission (Commission) decided her qualifying period was January 24, 2021 to January 22, 2022.

[3] The Claimant worked for five employers during her qualifying period. The Commission used the earnings reported on the five Records of Employment (ROE) to determine her weekly benefit rate. It determined that the Claimant's benefit rate was \$251 per week.

[4] The Claimant disagreed with the benefit rate determined by the Commission. She appealed to the Tribunal's General Division, arguing that her benefit rate should have been higher. The General Division dismissed the Claimant's appeal.

[5] The Claimant now asks for leave to appeal this decision to the Appeal Division. She disagrees with the General Division decision. The Claimant's application for leave to appeal is late. I must decide whether to grant the Claimant an extension of time.

[6] The Claimant's arguments about the General Division's errors do 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

[7] The issues are:

- a) Was the application to the Appeal Division late?

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

Analysis

The application was late

[8] The General Division decision is dated July 12, 2022 and it was sent to the Claimant by email on that day. The Claimant contacted the Tribunal by phone the following day saying that she disagreed with the decision and wanted to appeal.¹

[9] The application for leave to appeal was received on September 26, 2022.² This is more than 30 days after the Claimant received the General Division decision. This means that the application was late.

I am not extending the time for filing the application

[10] The Appeal Division may grant an extension to file if an application is late by not more than one year.³

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

- a) The Claimant had a continuing intention to pursue the application;
- b) There is a reasonable explanation for the delay;
- c) There is prejudice to the other party if I grant the extension; and
- d) There is an arguable case on appeal.⁴

[12] 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.⁵

¹ Telephone log dated July 13, 2022.

² AD1-1

³ See section 57(2) of the DESD Act.

⁴ The Federal Court set out this test in *Canada (Minister of Human Resources Development) v Gattellaro*, [2005 FC 833](#).

⁵ The Federal Court of Appeal outlined this test in *Canada (Attorney General) v Larkman*, [2012 FCA 204](#).

[13] I do not find that there is any prejudice to the Commission if I grant the application for an extension of time.

[14] In this case, the delay was six weeks. In her application for leave to appeal, the Claimant is asked for reasons why her application is late. The Claimant wrote “busy” in the space provide for an explanation.⁶

[15] I asked the Claimant to provide more details about why her application was late, and what steps she took that show she always intended to apply for leave to appeal.⁷ The Claimant sent a further email outlining the reasons she disagreed with the decision about her benefit rate.⁸ She did not provide any further reasons why her application was late or explain the steps she took since receiving the General Division decision.

[16] The Claimant contacted the Tribunal when she received the General Division decision and said she disagreed with the decision and wanted to appeal. The Tribunal sent her the form to apply for leave to appeal on July 13, 2022.⁹

[17] The Claimant contacted the Tribunal again on August 11, 2022. The Tribunal replied by email on August 22, 2022 explaining that a decision had been issued and her file was closed.¹⁰ The letter explained how the decision could have appealed to the Appeal Division and that she had 30 days from the day that she received the General Division decision. The Claimant submitted her application for leave to appeal on September 26, 2022.¹¹

[18] I find that the reasons provided by the Claimant do not show a continuing intention to appeal or a reasonable explanation for the delay. The Claimant was provided the required form to apply for leave to appeal within the 30-day time limit but

⁶ AD1-9

⁷ Letter dated October 11, 2022

⁸ AD1C

⁹ Telephone log dated July 13, 2022

¹⁰ Email from Tribunal to Claimant dated August 22, 2022

¹¹ AD1

did not apply until six weeks after the deadline. These factors do not support granting an extension of time.

[19] 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 she does not have an arguable case, it is not in the interests of justice to grant an extension.

[20] The Claimant did not specify what errors she feels the General Division made. She was asked to provide more details about the reasons for her appeal. It was explained in the letter that only the following reasons can be considered:

- a) The General Division did not follow procedural fairness;
- b) The General Division made an error of jurisdiction;
- c) The General Division made an error of law; and
- d) The General Division made an important error of fact.

[21] The Claimant did not provide further information about the errors she thinks the General Division made. In her response, the Claimant stated that she is waiting to get the money that she was cheated out of because her benefit rate was determined to be less than she thinks it should have been.¹²

[22] The Claimant highlighted that there were mistakes made on her claim by Service Canada when she initially applied in January. The Claimant disagrees with the General Division decision because she feels she was cheated on her bi-weekly rate.¹³

[23] I have reviewed the decision of the General Division and listened to the recording of the hearing. The General Division considered all of the arguments that the Claimant has made in her application for leave to appeal. In its decision, the General Division

¹² AD1C

¹³ AD1C

explained that there had been an issue in January 2022. Service Canada believed the Claimant had filed an earlier application, reporting have worked at Subway.¹⁴

[24] An investigation was conducted and the Commission determined that there was an error. The Claimant had to reapply in February and the Commission backdated her claim.¹⁵

[25] The Claimant argued at the hearing before the General Division that not all of the ROEs from her qualifying period should be taken into account, as this resulted in a lower benefit rate than she expected.

[26] The General Division explained in its decision how the benefit rate is determined. It decided that the Commission properly calculated the Claimant's benefit rate. It considered the Claimant's arguments and explained why all of the ROEs were used in determining the benefit rate.¹⁶

[27] The Claimant did not specify a ground of appeal in her application for leave to appeal. I have considered whether the reasons she provided, or the record, show any grounds on which the appeal has a reasonable chance of success.

[28] There is no arguable case that the General Division failed to provide a fair process. The General Division member offered the Claimant an adjournment and she wanted to continue with the hearing. There is no arguable case that the General Division based its decision on an important error of fact, or made an error of law. There is no arguable case that the General Division made an error of jurisdiction.

[29] The Claimant has not shown a continuing intention to appeal or a reasonable explanation for the delay. The Claimant also does not have an arguable case on appeal.¹⁷ For these reasons, I am not granting an extension of time.

¹⁴ General Division decision at paras 19 to 21.

¹⁵ General Division decision at para 23.

¹⁶ General Division decision at paras 35 to 39.

¹⁷ 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.

Conclusion

[30] An extension of time is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division