Social Security Tribunal of Canada
Tribunal de la sécurité sociale du Canada

Citation: *DH v Canada Employment Insurance Commission*, 2022 SST 1386

Tribunal File Number: GE-22-2562

BETWEEN:

D. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

DATE OF DECISION: September 6, 2022

Canada

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for employment insurance (EI) benefits on April 10, 2022. The Respondent (Commission) decided he couldn't be paid EI benefits because he was short the number of hours of insurable employment required to qualify for benefits. He had 413 hours in his qualifying period, but needed 420 hours to establish a claim for EI benefits.

[2] Further to a request for reconsideration filed on May 20, 2022, the Commission issued a decision under section 112 of the *Employment Insurance Act* (EI Act) on June 14, 2022. The reconsideration decision maintained the original April 12, 2022 decision that the Appellant could not be paid because he was short of the insurable hours of employment he needed to qualify for EI benefits[1]. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[3] The Appellant said he received the original decision letter on April 12, 2022 and included a copy of it with the Notice of Appeal he filed with the Tribunal. But he did not provide any information about when he received the **reconsideration decision letter**, nor did he include a copy of it with his Notice of Appeal[2]. However, there is a record that indicates the outcome of the reconsideration was communicated to the Appellant during a phone call with a Service Canada representative on June 14, 2021[3].

[4] In accordance with paragraph 52(1)(a) of the *Department of Employment and Social Development Act* (DESD Act), the Appellant had 30 days to file an appeal with the Tribunal. Allowing 10 days for the time it takes a letter to be delivered by regular mail, the Appellant had until July 25, 2022 to file an appeal with the Tribunal. He filed his appeal on August 2, 2022, outside the 30-day time limit.

---

[1] The original April 12, 2022 decision is at GD3-21 in the reconsideration file.
[2] On August 19, 2022, the Tribunal asked the Appellant to provide the date he received the reconsideration decision letter (which the Commission issued on June 14, 2022) (see GD5-1). But he did not answer this question in his response of August 24, 2022.
[3] See Supplementary Record of Claim at GD3-26.

[5] Before his appeal can proceed, I must decide whether to allow an extension of time for the Appellant to appeal pursuant to subsection 52(2) of the DESD Act.

ANALYSIS

[6] In deciding whether to allow further time to appeal, I must consider and weigh the four factors set out in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883. The weight to be given to each of the *Gattellaro* factors may differ in each case, and in some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served (*Canada (Attorney General) v. Larkman,* 2012 FCA 204; see also *Jama v. Canada (Attorney General),* 2016 FC 1290, which confirmed this approach in considering whether an extension of time should be granted).

[7] The Tribunal sent a letter to the Appellant on August 19, 2022 asking him to explain why his appeal was late and to show how he had a continuing intention to appeal[4] (GD5). The Appellant responded by E-mail on August 24, 2022 as follows:

> "My reasons for being late on sending my appeal was because everytime I called it was a two to three our wait time. And I was waiting for documents from past employer and that took forever to get from them. There were many phone calls to the government but I had to wait for response I have no control over that."

[8] I will now proceed with the *Gattellaro* analysis based on the information available to me in the reconsideration file, the Notice of Appeal, and the Appellant's E-mail of August 24, 2022.

Continuing Intention to Pursue the Appeal

[9] I find the decision maintaining that the Appellant didn't have enough hours of insurable employment to qualify for EI benefits[5] was communicated to him on **June 24,**

[4] In Box 9 of the Notice of Appeal form, the Appellant was asked to explain why his appeal was late. He left this section blank, so the Tribunal wrote to him on August 19, 2022 (GD5) and asked him to provide specific information about why his appeal was late.
[5] This is the reconsideration decision the Appellant has appealed to the Tribunal.

2022, which is 10 days after the decision letter was issued on June 14, 2022. I make this finding by allowing a reasonable amount of time for the reconsideration decision letter to reach him via Canada Post's regular mail service.

[10] To satisfy this *Gattellaro* factor, the Appellant must demonstrate that he formed an intention to appeal within the 30-day appeal period that commenced June 24, 2022.

[11] The Appellant does not say that he didn't receive the decision letter. However, I see no evidence that he formed the intention to appeal or took any steps towards filing an appeal within 30 days of the reconsideration decision being communicated to him (verbally or otherwise).

[12] There is no new evidence included with his appeal that was not before the Commission during the reconsideration process; and no explanation as to why the Declaration in the Notice of Appeal was not signed until July 25, 2022[6] – the very last day of the 30-day appeal period.

[13] I therefore find that the Appellant did not have a continuing intention to pursue the appeal.

Arguable Case

[14] The Federal Court of Appeal has found that the question of whether there is an arguable case at law is akin to determining whether there is a reasonable chance of success (*Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41); *Fancy v. Canada (Minister of Social Development)*, 2010 FCA 63).

[15] The issue in this appeal is whether the Commission correctly determined that the Appellant didn't have enough hours of insurable employment to qualify for EI benefits.

[16] To overturn this decision, the Appellant must prove that the Commission made a mistake in its calculations.

---

[6] See Box 11 at GD2-5.

[17] In his Notice of Appeal, the Appellant said he was only 7 hours short of the hours he needed to qualify for EI benefits. He also said he missed 4 days of work because he contracted the Covid-19 virus, and these 4 days[7] would have given him the hours he needed.

[18] Unfortunately for him, none of this addresses the question of whether the Commission correctly determined that he didn't qualify for EI benefits.

[19] To be paid EI benefits, the Appellant must meet the requirements set out in section 7 of the EI Act[8]. The Commission determined that he needs 420 hours[9] of insurable employment in his qualifying period[10] to establish a claim for regular EI benefits on the application he made on April 10, 2022. He only has 413 hours[11].

[20] None of the Appellant's arguments challenge these calculations, let alone identify any errors in them. He does not dispute the Commission's determination of his qualifying period (April 4, 2021 to April 2, 2022), the hours of insurable employment he needs to qualify for EI benefits (420), or the hours of insurable employment he accumulated during his qualifying period (413).

[21] The Tribunal does not have discretion to disregard or override the qualifying requirements in the EI Act. The Federal Court of Appeal confirmed this principle when it considered a case similar to the Appellant's, where the claimant was short only 1 hour of meeting the qualifying requirements[12]. In that case, the court said that the requirements set out in the EI Act are not within the discretion of the decision maker to vary – even if a claimant is short only one (1) hour of meeting the qualifying conditions.

---

[7] In his Request for Reconsideration he stated the 4 missed days of work would have been an additional 32 hours (see GD3-23).
[8] That is, he must have experienced an interruption of earnings from employment ***and*** have accumulated a minimum number of hours of insurable employment during his qualifying period.
[9] The 420-hour minimum requirement for hours of insurable employment is set out in subsection 7(2) of the EI Act.
[10] According to section 8(1) of the EI Act, the Appellant's qualifying period is the 52-week period prior to the potential start of his benefit period, namely from April 4, 2021 to April 2, 2022.
[11] This is made up for hours accumulated from two different employers: see Records of Employment at GD3-15 and GD3-17.
[12] *Attorney General (Canada) v. Lévesque*, 2001 FCA 304

[22] The Tribunal also do not have jurisdiction to grant the equitable relief the Appellant is asking for[13], namely to order that he be paid EI benefits even though he does not have enough hours to qualify for benefits.

[23] Nor can it make an exception for the Appellant, no matter how difficult or compelling his circumstances may be[14].

[24] The Appellant requires 420 hours of insurable employment in his qualifying period to establish a claim for EI benefits on the application he filed on April 10, 2022. I simply cannot alter or waive this requirement. He only has 413 hours. This means he cannot satisfy the requirements to qualify for EI benefits.

[25] I therefore find that the Appellant has not set out an arguable case on his appeal.

Reasonable Explanation for the Delay

[26] The Appellant filed his appeal on August 2, 2022.

[27] This means that the period of his delay is relatively short, namely the 8 days between July 25, 2022 (the expiry of the 30-day period to file an appeal based on communication of the reconsideration decision) and August 2, 2022 (the date he actually filed his appeal with the Tribunal).

[28] But the Appellant's explanation for this brief delay does not make any sense.

[29] As set out in paragraph 7 above, the Appellant attributed his delay to many phone calls to the government, long waits on the phone and long waits for a response. But there is no indication of the nature of his calls or what information he was waiting for in response. Given that his appeal repeats the very same statements he made in his Request for Reconsideration – including why his Request for Reconsideration was

---

[13] It is bound by the law and cannot refuse to apply it, even on grounds of equity: *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141.
[14] *Pannu*, 2004 FCA 90. At GD3-23, the Appellant said he did not want to be "left penniless". I acknowledge the Appellant's difficult financial circumstances, but cannot take this into consideration on his appeal.

late[15], I cannot see how this is relevant to explaining the delay in filing his appeal with the Tribunal.

[30] He also said he was waiting for documents from a past employer. But there is no new evidence or information from a past employer included in his appeal, so I similarly cannot see how this is relevant to the delay in filing his appeal.

[31] I therefore find that the Appellant did not provide a ***reasonable*** explanation for his delay in filing this appeal.

Prejudice to the Other Party

[32] The Commission's interests do not appear to be prejudiced given the relatively short period of time that has lapsed since the reconsideration decision. They have already provided their documents and submissions in relation to the appeal and, therefore, would not be unduly affected by an extension of time to appeal.

CONCLUSION

[33] In consideration of the *Gattellaro* factors and in the interests of justice, I find that an extension of time to appeal pursuant to subsection 52(2) of the DESD Act is refused.

[34] The Appellant has not satisfied 3 of the 4 *Gattellaro* factors, and allowing an extension of time is not in the interest of justice because the Appellant has not presented an arguable case on his appeal.

[35] This means that the Appellant's appeal is refused and will not proceed.

Teresa M. Day

Member, General Division – Employment Insurance

[15] See GD3-23 to GD3-24.