



Citation: *PJ v Canada Employment Insurance Commission*, 2022 SST 1278

## **Social Security Tribunal of Canada Appeal Division**

### **Extension of Time Decision**

**Applicant:** P. J.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated June 29, 2022  
(GE-22-1112)

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**Tribunal member:** Stephen Bergen

**Decision date:** November 26, 2022

**File number:** AD-22-680

## **Decision**

[1] I am refusing the Claimant an extension of time to apply for leave (permission) to appeal. I will not consider the application for leave to appeal.

## **Overview**

[2] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Applicant, P. J. (Claimant), was not entitled to regular Employment Insurance (EI) benefits because she was outside of Canada.

[3] The Claimant asked the Commission to reconsider, but the Commission would not change its original decision. The Claimant appealed the reconsideration decision to the General Division. She argued that she had been outside of Canada to visit a seriously ill family member and that she continued to look for Canada by remote means while she was out of the country.

[4] The General Division accepted that the Claimant was visiting a seriously ill family member and allowed that she was entitled to EI benefits for the first seven days that she was out of Canada. However, it decided that she was not entitled to EI Benefits for the rest of the time she was out of Canada. It did not accept that she had left Canada to conduct a job search.

[5] The Claimant applied for leave to appeal the General Division decision to the Appeal Division but her application was late.

[6] I am refusing an extension of time and I will not be considering the Claimant's appeal. I am not satisfied that it is in the interests of justice for me to consider the late appeal.

## **Analysis**

### **The application was late**

[7] The first question I must decide is whether the application for leave to appeal was late.

[8] The law says that an applicant must file the application to the Appeal Division within 30 days of the date that they received the General Division decision.<sup>1</sup>

[9] When the Claimant completed her Application to the Appeal Division, she acknowledged that she was applying late but did not say when she received the General Division decision. There is no information in the file that identifies when she actually received the decision.

[10] The Applicant started her original appeal to the General Division by filing a Notice of Appeal form. She gave the General Division her email address on the form and confirmed that it should send correspondence and documents to her by email.<sup>2</sup>

[11] The General Division issued its decision on June 29, 2022, and emailed it to the Claimant on the same day.

[12] The law says that a decision is “deemed to have been communicated” on the next business date after the day it is sent by email.<sup>3</sup> That means that I may presume that the Claimant received the General Division decision on the next business day after the General Division emailed her, unless the Claimant can show that she received it on some other day.

[13] The next business date after June 29, 2022, is June 30, 2022. In the absence of evidence to the contrary, I find that the General Division communicated the decision to the Claimant on June 30, 2022.

[14] The Claimant gave September 19, 2022, as the date on her Application to the Appeal Division. The Appeal Division received it the same day. The deadline to file the application was 30 days from June 30, 2022, which is July 30, 2022.

[15] The Claimant’s application was about seven weeks late.

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<sup>1</sup> See section 57(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>2</sup> See GD2-3.

<sup>3</sup> See section 19(1)(c) of the *Social Security Tribunal Regulations*.

## **I am not extending the time for filing the application**

[16] When deciding whether to grant an extension of time, I have to consider the following factors:

1. Was there a continuing intention to pursue the application?
2. Does the application disclose an arguable case?
3. Is there a reasonable explanation for the delay?
4. Is there prejudice to the other party?<sup>4</sup>

[17] 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.<sup>5</sup>

### **– Continuing intention and reasonable explanation**

[18] The Claimant knew that she was filing her application late. By way of explanation, she said,

I just did not hear back from any party, and it led to confusion as I wanted to discuss this possibility. And because the representative of Service Canada did not participate in the tribunal, it seems that this is the only way how to continue the communication.<sup>6</sup>

[19] The Appeal Division acknowledged the Claimant's application on September 28, 2022. It stated that the application appeared to be late, but it did not ask the Claimant to elaborate on her reasons for filing a late appeal.

[20] I emailed the Claimant on November 22, 2022 to ask if she had anything to add to what she said on the application form. I explained the factors that I would have to look at before deciding whether to allow the leave to appeal application to proceed. I

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

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

<sup>6</sup> See AD1-4.

gave the Claimant until November 25, 2022 to respond to my letter, but the Claimant did not respond.

[21] As I understand the Claimant's explanation for filing her application late, she wanted to discuss the possibility of an appeal but she did not know who to speak to, or how to contact Service Canada.

[22] The Claimant may have been unsure what to do about the General Division decision but this does not help her show that she had formed an intention to appeal, let alone that she had a "continuing intention". There is nothing in the record to suggest that she took any steps to clarify whether she should appeal, or how to go about it.

[23] Furthermore, I do not accept that the Claimant's explanation is reasonable. The General Division sent her its decision with a cover letter. The cover letter explained what she could do if she disagreed with the General Division decision. It described the leave to appeal process, provided a link to the application form, set out the deadline to appeal, and gave the Social Security Tribunal's contact information. The Claimant should have known how to appeal on time.

[24] My findings on these two factors weigh against allowing the extension of time.

– **Unfairness to another party**

[25] The only other party to this appeal is the Commission.

[26] The Commission is aware that the timeliness of the Claimant's application is at issue. It received a copy of the Appeal Division's letter that acknowledged receipt of the Claimant's application and informed her that it appeared to be late. It also received a copy of my November 22, 2022 request for additional information about whether and why the Claimant's application was late.

[27] The Commission has not taken any position on this issue.

[28] In the absence of argument or evidence, I will not speculate on how the Claimant's delay may have been unfair to the Commission. I find that the lateness of the application for leave to appeal was not unfair to the Commission.

[29] My finding on this factor weighs in favour of allowing the extension of time.

– **Arguable case**

[30] Finally, I must consider whether the Claimant has an arguable case. An arguable case would be some argument on which the Claimant could possibly be successful in her appeal.

[31] For the Claimant's application for leave to appeal to succeed, her reasons for appealing would have to fit within the "grounds of appeal." I could only grant leave to appeal if there was an arguable case that the General Division made one or more of the following errors:<sup>7</sup>

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[32] In her Application to the Appeal Division, the Claimant originally said that she did not think the General Division had made a mistake and she said she understood it had to follow the law. She did not identify any error in the General Division decision.

[33] The Appeal Division wrote to the Claimant on October 11, 2022 to point out that she not identified an error. It set out the grounds of appeal and asked the Claimant to explain why she thought the General Division had made an error.

[34] The Claimant responded but did not identify any error. She restated that she had continued her job search while out of Canada and that she needed to stay away longer

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<sup>7</sup> This is a plain-language version of the three grounds. The full text is in section 58(1) of the DESD Act.

because of her mother's health conditions. She also asked the Appeal Division to consider the plight of immigrants, whose families resided outside of Canada. She had not been able to see her family for over two years because of Covid.

[35] The Claimant's circumstances are sympathetic, but she has not identified any instance in which the General Division overlooked or misunderstood the evidence. The Claimant considered her reasons for being out of Canada. It allowed that she was entitled to benefits while she visited her ill mother, but only for the limited period permitted by law.<sup>8</sup> It also considered her evidence that she was looking for work in Canada remotely while she was out of Canada. However, it found that this was not her purpose in being out of Canada.<sup>9</sup> There is no arguable case that the General Division made an important error of fact.

[36] The Claimant has not pointed to an error of law, and no error of law is obvious to me. The Claimant appears to disagree with the law itself or how it affects her. However, the General Division was required to follow the law, as the Claimant herself noted.

[37] The issue in the reconsideration decision was whether the Claimant was disentitled to benefits for all or part of the time she was outside of Canada.<sup>10</sup> That was the one issue that the General Division had to decide.<sup>11</sup> To do so, the General Division also had to consider whether any of the exceptions to disentanglement applied.<sup>12</sup> The General Division considered the exceptions and reached a decision about whether the Claimant was disentitled when she was outside Canada. It did not consider any other issue. So there is no arguable case that it made an error of jurisdiction.

[38] Likewise, there is no arguable case that the General Division made an error of fairness. The "fairness" error is about the fairness of the **process** only. It is not about

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<sup>8</sup> See AD1A-6, the General Division decision, at para 18.

<sup>9</sup> See AD1A-6, the General Division decision, at para 17.

<sup>10</sup> See section 37(b) of the *Employment Insurance Act* (EI Act).

<sup>11</sup> See section 112 and section 113 of the EI Act.

<sup>12</sup> The exceptions are described in section 55(1) of the *Employment Insurance Regulations*.

whether anyone thinks the result is unfair. The Claimant has not asserted that any part of the General Division process was unfair.

[39] If the appeal were permitted to proceed, the Claimant would have no arguable case.

[40] My finding on this final factor weighs against allowing the extension of time. I give this factor significant weight.

– **Summary**

[41] I have considered all of the factors. The Claimant has not shown that she had a continuing intention to appeal, has not provided a reasonable explanation for the delay, and has not made out an arguable case. The only factor in her favour is that it would not be unfair to the Commission if I granted an extension.

[42] Given my findings on these factors, I am not satisfied that an extension of time is in the interests of justice.

**Conclusion**

[43] I am refusing the extension of time. This means that the appeal will not proceed.

Stephen Bergen  
Member, Appeal Division