



Citation: *TJ v Canada Employment Insurance Commission*, 2022 SST 1290

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: T. J.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 8, 2022
(GE-22-1429)

Tribunal member: Pierre Lafontaine

Decision date: November 30, 2022

File number: AD-22-848

Decision

[1] An extension of time to file an application for leave (permission) to appeal is refused.

Overview

[2] The Applicant (Claimant) lost her job because she did not comply with the employer's COVID-19 vaccination policy (Policy). The Claimant then applied for Employment Insurance (EI) regular benefits.

[3] The Respondent (Commission) determined that the Claimant lost her job because of misconduct, so it was not able to pay her benefits. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[4] The General Division found that the Claimant lost her job following her refusal to follow the employer's Policy. It found that the Claimant knew or ought to have known that the employer was likely to dismiss her in these circumstances. The General Division concluded that the Claimant was dismissed from her job because of misconduct.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She puts forward that she had to go through a series of unfortunate events during the summer.¹ She is asking a late application acceptance.

[6] I must decide whether I will allow the late application and if I do, I must decide whether the appeal has a reasonable chance of success.

[7] I refuse to grant the Claimant an extension of time to file an application for leave (permission) to appeal.

¹ See AD-1-6.

Issues

[8] Issue 1: Is the late application for leave to appeal granted?

[9] Issue 2: If so, does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

Issue 1: Is the late application for leave to appeal granted?

[10] The Claimant filed her application for leave to appeal on November 16, 2022. She received communication of the General Division on August 8, 2022.

[11] In deciding whether to grant an extension of time to file an application for leave to appeal to the Appeal Division, the over-riding consideration is whether the interest of justice favors granting the extension.²

[12] Relevant factors to consider are whether:

- (a) there is an arguable case on appeal;
- (b) special circumstances justify the delay in filing the notice of appeal;
- (c) the delay is excessive; and
- (d) the Commission will be prejudiced if the extension is granted.

[13] Although the Commission will not be prejudiced by the delay to file the application for leave to appeal, I find that the delay of three months before filing the leave to appeal application to be excessive.

² *X (Re)*, 2014 FCA 249, *Grewal v Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[14] The Claimant explains that she had a horrible summer because she had to go through a series of unfortunate events. She only filed her application for leave to appeal on November 16, 2022.

[15] I note that the Claimant received the notice of hearing, and participated at the hearing before the General Division held in the summer on July 21, 2022. She took notice of the General Division decision on August 8, 2022. However, she only filed her application for leave to appeal in the fall on November 16, 2022.

[16] Although I sympathize with the Claimant, I find that she has not raised any special circumstances that prevented her from filing a leave to appeal application during the allowed time or much sooner than November 16, 2022.³

[17] Furthermore, I am not convinced that the Claimant has an arguable case or that her appeal has a reasonable chance of success.

[18] In support of her application for permission to appeal, the Claimant submits that there was no misconduct. She was let go because she would not allow her employer access to her personal health records. She submits that the employer's Policy was a violation of her employment contract and of her civil and religious rights and freedoms.

[19] The General Division found that the only information that had to be disclosed was the Claimant's COVID-19 vaccination status. It did not accept the Claimant's testimony that she was required to give access to all her personal health information.

³ See Section 57(1) of the *Department of Employment and Social Development Act* indicates that an application for leave to appeal must be made to the Appeal Division 30 days after the day on which a decision is communicated to the claimant.

[20] The General Division found that the Claimant did not, in her documents, in her conversations with the Commission, or in her testimony, provide evidence or submissions in support of the claim that her civil and religious rights and freedom had been violated.

[21] The General Division determined that the Claimant lost her job because she refused to follow the employer's Policy. She had been informed of the employer's Policy and was given time to comply. She was not granted an exemption. The Claimant refused intentionally; this refusal was wilful. This was the direct cause of her dismissal. The General Division found that the Claimant knew or ought to have known that her refusal to comply with the Policy could lead to her dismissal. The General Division concluded from the preponderant evidence that the Claimant's behavior constituted misconduct.

[22] It is well-established that a deliberate violation of the employer's policy is considered misconduct within the meaning of the *Employment Insurance Act*.⁴

[23] The question of whether the employer's Policy violated the Claimant's rights, is a matter for another forum. This Tribunal is not the appropriate forum through which the Claimant can obtain the remedy that she is seeking.⁵

[24] The Claimant, in her leave to appeal application, would essentially like to represent her case to the Appeal Division. Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing, where a party can represent its evidence and hope for a new favorable outcome.

⁴ *Canada (Attorney General) v Bellavance*, 2005 FCA 87; *Canada (Attorney General) v Gagnon*, 2002 FCA 460.

⁵ In *Paradis v Canada (Attorney General)*, 2016 FC 1282, the Claimant argued that the employer's policy violated his rights under the *Alberta Human Rights Act*. The Court found it was a matter for another forum. The Court also stated that there are available remedies to sanction the behaviour of an employer other than transferring the costs of that behaviour to the Canadian taxpayers by way of unemployment benefits.; See also *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36, stating that the employer's duty to accommodate is irrelevant in deciding misconduct cases.

[25] After considering all the above factors, I am not convinced that the interest of justice favors granting the extension.

Conclusion

[26] An extension of time to file an application for leave (permission) to appeal is refused.

Pierre Lafontaine
Member, Appeal Division