



Citation: *SL v Canada Employment Insurance Commission*, 2023 SST 215

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: S. L.
Representative: R. I.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 14, 2022
(GE-22-2401)

Tribunal member: Stephen Bergen

Decision date: February 27, 2022

File number: AD-23-25

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 Applicant for leave to appeal is S. L. I will refer to him as the Claimant because he was trying to claim Employment Insurance (EI) benefits. He mailed his application for sickness benefits in late January or in February 2022. The Respondent, the Canada Employment Insurance Commission (Commission), received his application on February 21, 2022.

[3] The Claimant asked the Commission to treat his application as though it had been received in July 2019. This is called “antedating” the claim. The Respondent, the Canada Employment Insurance Commission (Commission), refused to antedate the claim. It found that the Claimant did not have a good reason for the delay throughout the entire period of the delay. It also decided that the Claimant was not entitled to benefits as of January 2022, because he did not have sufficient hours of insurable employment to qualify at that time.

[4] The Commission would not change its decision when the Claimant asked it to reconsider, so the Claimant appealed to the General Division of the Social Security Tribunal (Tribunal). The General Division dismissed his appeal on October 14, 2022.

[5] In response, the Claimant asked the Appeal Division for leave to appeal the General Division decision. He filed his application on January 5, 2023. The application was late. That means that I cannot consider his leave to appeal application unless I first grant him an extension of time.

[6] I am refusing an extension of time. The Claimant has not satisfied me that he has a reasonable explanation for making a late application.

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.¹

[9] The General Division issued its decision on October 14, 2022, and sent it by email to the Claimant on the same day. I will need to make a finding about when the Claimant received the decision.

[10] The Claimant started his appeal to the General Division by filing a Notice of Appeal form. In the form, he provided an email address. He also confirmed that the General Division should send correspondence and documents by email.

[11] The law says that a decision is “deemed to have been communicated” on the next business date after the day it is transmitted by email.² The next business date after October 14, 2022, was October 15, 2022.

[12] That means that I may presume that the Claimant received the General Division decision on October 15, 2022, unless the evidence satisfies me that he received it on some other day.

[13] In his Application to the Appeal Division, the Claimant stated that he did not remember when he received the decision. I wrote to the Claimant’s counsel (Mr. R.I.) on February 7, 2022. In my letter, I asked again when the Claimant received the General Division decision. Mr. R.I. responded to my letter on February 20, 2022, but he did not say anything about when the Claimant received the decision.

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

² See section 19(1)(c) of the *Social Security Tribunal Regulations*.

[14] However, the Tribunal's telephone logs suggest that the Claimant had not received the decision until after October 15, 2022. On October 17, 2022, Tribunal staff told the Claimant that the Tribunal had sent him the decision on October 14, 2022, along with information about what he should do if he disagreed with the decision.

[15] The Claimant spoke with the Tribunal on October 18, 2022. He said that he still had not received the decision, but said that he would check his computer. He said he would call back if he discovered that he had not received it.

[16] The Claimant called the Tribunal on October 24, 2022, once again claiming that he had not received the decision. The Tribunal confirmed that his email address was correct and sent a second email copy. It also sent a copy of the decision regular mail.

[17] On November 3, 2022, the Tribunal informed the Claimant that it had sent him the wrong form for applying for leave. Tribunal staff told him that he could still appeal without the correct form. The Claimant did not like the idea of appealing without the right form. Nothing in the notes of their conversation suggest that the Claimant had not received the General Division decision by that time.

[18] I find that the General Division decision was communicated by November 3, 2022, at the latest.

[19] Before November 3, the Claimant had been calling regularly to say that he had not received the decision. However, when he called on November 3, he did not ask about it, or say that he had not received it. The Tribunal advised him that he could still appeal the decision without the proper form.

[20] I think it is unlikely that the Tribunal would have given him this advice unless it understood that the Claimant had a copy of the decision he wanted to appeal. I also think that the Claimant would likely have expressed some concern that he did not have the decision (if that had been the case) and asked how he could appeal a decision that he had not seen. Instead, he seems to have been concerned only with how he would appeal without the right form.

[21] Since I have found that the Claimant received the decision by November 3, 2022, the deadline to file the Application to the Appeal Division would have been December 2, 2022. The Appeal Division received the Claimant's application on January 5, 2023.

[22] The application for leave to appeal is just over a month late.

I am not extending the time for filing the application

– Reasonable explanation

[23] When deciding whether to grant an extension of time, I must consider whether the Claimant has a reasonable explanation for why he did not file his application on time.³

[24] The Claimant is represented by Mr. R.I., who filed the application on his behalf. Mr. R.I. explained in the application that the Claimant was filing late because he had changed his address and was thus "unable to receive correspondence at the time". Additionally, Mr. R.I. described the Claimant as having health difficulties. He said that these prevented the Claimant from independent action, and caused him to rely on family members.

[25] When I wrote Mr. R.I. on February 7, 2023, I gave him another opportunity to explain why the Claimant's application was late and to tell me why his explanation was reasonable.

[26] Mr. R.I. responded on February 20, 2023, and expanded on his earlier explanation. He added the following details:

- The change of address described in the earlier explanation was a change in the Claimant's "address of living".
- The Claimant does not have the "qualifications or experience" to read and understand the decision or other Tribunal documentation.

³ See section 27(2) of the *Social Security Tribunal Rules of Procedure*.

- The Claimant made an appointment in early December 2022 with Mr. R.I.'s law firm to discuss the October 14, 2022, General Division decision. He was not aware that the deadline to file the application to the Appeal Division had passed, until he consulted with Mr. R.I..
- The Claimant had hearing and communication "issues".
- The Claimant had relied on his daughter to help him understand and respond to questions at the General Division hearing.

[27] I find that the Claimant has not provided a reasonable explanation for his late application.

[28] The Claimant argues that his address changed and that this was a factor in why his application was late. However, the Claimant's Notice of Appeal authorized the General Division to correspond with him using an email address he provided. The General Division sent all of its correspondence to the Claimant at this email address, including the General Division decision.

[29] In addition, the Claimant later confirmed that the Tribunal had the correct email address to reach him.

[30] In the course of many telephone calls with Tribunal staff, the Claimant did not once say that his residential address had changed. This includes the conversation in which he asked that a copy of the General Division decision be sent to him by regular mail. His current address on the Tribunal file is no different than the address at the head of the July 21, 2022, letter. This was the letter in which the General Division acknowledged the Claimant's Notice of Appeal.

[31] The Claimant has not said if he finally sorted out his email to receive the decision, or if his copy of the decision came to him by regular mail. If by email, a change in his residential address is not relevant. If he received his copy by regular mail, and not by email, he has not explained how the change in his residential address delayed his retrieval of the decision.

[32] The Claimant may be accustomed to rely on others to help him, as he relied on his daughter at the General Division hearing. However, he has not said that had lost the help of those others between when he received the General Division decision and when he filed the application to the Appeal Division. His daughter seemed to be willing to continue to help even after the General Division hearing. The Claimant told the Tribunal on October 4, 2022, that his daughter would be helping him submit a post-hearing statement.

[33] In the same October 4, 2022, call, the Claimant stated that he had difficulties because he had had a stroke.⁴ I have no reason to doubt that the Claimant has some kind of “hearing and communication issues”, as Mr. R.I. argued. However, the Claimant has not stated the nature or extent of these issues. He has not explained how they would have affected his ability to file an application on time.

[34] The Claimant had numerous conversations with the Tribunal, both before and after the General Division hearing. I see no evidence in the notes of those conversations that he was having difficulty communicating with the Tribunal.

[35] Furthermore, the Claimant consulted Mr. R.I. in “early December 2022”, and he is now represented. Yet his application to the Appeal Division was not filed until January 5, 2022. Neither Mr. R.I. nor the Claimant have offered any explanation for the continuing delay between when he consulted Mr. R.I. and when he finally filed.

– **Summary**

[36] I am not satisfied that the Claimant has a reasonable explanation for the delay.

Conclusion

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

Stephen Bergen
Member, Appeal Division

⁴ His stroke was in 2019, according to GD6.