



Citation: *HM v Canada Employment Insurance Commission*, 2023 SST 272

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

**Extension of Time Decision**

**Applicant:** H. M.  
**Representative:** D. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated July 25, 2022  
(GE-22-1385)

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**Tribunal member:** Stephen Bergen

**Decision date:** ~~March 13, 2022~~  
**[March 13, 2023]**

**CORRIGENDUM DATE:** **June 26, 2023**

**File number:** AD-22-953

## **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 H. M. I will refer to her as the Claimant because she was trying to claim Employment Insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant was disqualified from receiving benefits after February 11, 2018, because she voluntarily left her employment without just cause. It also decided that she had not declared all her earnings during an earlier period in which she received benefits.

[3] The Commission informed the Claimant of its decisions in a letter dated December 9, 2019. The Claimant asked the Commission to reconsider its decision on February 28, 2022 (received by the Commission on March 4, 2022).

[4] The Commission declined to reconsider its decision because the Claimant was out of time to seek a reconsideration and because she did not have a reasonable explanation for the delay. The Claimant appealed to the General Division which dismissed her appeal on July 25, 2022.

[5] She is now asking for leave to appeal the General Division of the Social Security Tribunal (Tribunal). However, her Application to the Appeal Division is also late and she does not have a reasonable explanation for her late application.

[6] I am refusing an extension of time and it will not be considering the Claimant's 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] The Applicant started her appeal to the General Division by filing a Notice of Appeal form. In the form, she provided an email address, and she confirmed that the General Division should send correspondence and documents by email.

[10] The General Division decision was issued on July 25, 2022. In her Application to the Appeal Division, the Claimant stated that she received the General Division decision on July 25, 2022. However, the Tribunal's records indicate that it sent the decision by email on July 26, 2022, the day following the date it issued the decision was issued.

[11] I wrote to the Claimant on February 6, 2023. In that letter, I asked her when she actually received the General Division decision. She finally responded to my letter on March 6, 2023, but she did not say anything about when she received the decision.

[12] The Tribunal's records suggest that it sent the July 25, 2022, decision on July 26, 2022, but the Claimant says that she received it on July 25, 2022. Since both cannot be true, I find that she received the decision on July 27, 2022.'

[13] I have chosen July 27, 2022, because July 27, 2022, is the next business day after July 26, 2022. The law says that I may presume that the Claimant received the General Division decision on the next business day after it was emailed to her, unless the Claimant can show that she received it on some other day. A decision is "deemed to have been communicated" on the next business date after the day it is transmitted by email.<sup>2</sup>

[14] The Claimant attempted to appeal the General Division by sending some materials to the Appeal Division on December 19, 2022. This first effort was incomplete. The Claimant did not file an application that expressed an intention to appeal until she filed an Application to the Appeal Division on February 2, 2023.

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

[15] However, even if I accept that December 19, 2022, is the date that the Claimant first filed her application to the Appeal Division, the application is still late. Thirty days from July 27, 2022, is August 26, 2022. Her first attempt to apply for leave to appeal would have been nearly 4 months late.

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

#### **– Reasonable explanation**

[16] When deciding whether to grant an extension of time, I must consider whether the claimant has a reasonable explanation for why they filed their application late.<sup>3</sup>

[17] The Claimant did not explain why her application was late in her December 19, 2022, materials or in the application form that she filed on February 2, 2023.

[18] I mentioned that I wrote to the Claimant on February 6, 2023. In my letter, I asked her to also explain why her application was late. I gave the Claimant until February 18, 2023, to respond.

[19] Tribunal staff contacted the Claimant on February 14, 2023, to remind her that it was waiting for her response to the February 6, 2023, letter. The Tribunal granted the Claimant an extension to March 6, 2023. On March 3, 2023, the Tribunal called the Claimant to remind her of the new deadline, and the Claimant stated that she would send her response by the deadline. The Claimant sent her explanation on March 6, 2023.

[20] In her explanation, the Claimant acknowledged that she had received a letter that explained that she could appeal, together with the General Division decision. However, she said that she did not appeal because she did not think she would be successful. She believed that the same member who made the decision at the General Division would decide her appeal of the General Division decision, and she did not expect that member to decide the appeal fairly.

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

[21] The letter that accompanies the General Division states as follows:

If you disagree with the Tribunal's decision, you can appeal.

Any party who disagrees with this decision can ask the Appeal Division of the Tribunal to review this General Division decision. This is called asking for "leave (permission) to appeal." To start this process, complete an Application to the Appeal Division form. You can find this form on the Tribunal's website at [www1.canada.ca/en/sst/forms.html](http://www1.canada.ca/en/sst/forms.html).

You have 30 days from the day you receive this letter to submit your form.

[22] I do not accept that the Claimant has a reasonable explanation or not applying to the Appeal Division in time.

[23] The Claimant did not like the General Division decision and presumed that the appeal process would be unfair. However, she had no reason to presume the process would be unfair. Nothing in the letter suggests that the Appeal Division appeal would be heard by the same person that heard the appeal at the General Division.

[24] The Claimant says that she first learned that the General Division member would not be involved in an Appeal Division appeal, when the Tribunal called her. I see no record of that call. But, regardless of when the Claimant first learned that a different member would decide her appeal at the Appeal Division, she could have called the Tribunal at any time after receiving the General Division to clarify the appeal process.

[25] The General Division's letter to the Claimant provided the Tribunal's contact information including its hours of operation and its email address, phone number, and fax numbers.

[26] There is no evidence that the Claimant, or her representative, tried to contact the Tribunal until she tried to file an application on December 19, 2022.

[27] The Claimant also describes some difficult circumstances in her life, including an abusive relationship, having to flee her home, and having her mail stolen. However, she

has not explained when, or how, these circumstances developed. She talks about her abuser causing her to leave her job, and about miscalculations in reporting her earnings. However, it seems that she is talking about this to explain why the General Division decision was wrongly- decided. She has not said how any of those circumstances interfered with her ability to file her application on time.

[28] Whatever the Claimant's personal circumstances, I note that she was supported and represented by her mother at the General Division and that her mother continues to represent her even now. If her personal circumstances interfered with her ability to clarify the appeal process, or to complete and file an application, she had someone that could have helped her.

[29] I find that the Claimant does not have a reasonable explanation for her delay.

## **Conclusion**

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

Stephen Bergen  
Member, Appeal Division