Citation: *SV v Canada Employment Insurance Commission*, 2023 SST 590

Social Security Tribunal of Canada
Appeal Division

Extension of Time Decision

Applicant:	S. V.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 24, 2023 (GE-23-234)

Tribunal member:	Neil Nawaz
Decision date:	May 11, 2023
File number:	AD-23-356

Decision

[1] I am refusing the Applicant permission to appeal because she does not have an arguable case. This appeal will not be going forward.

Overview

[2] The Applicant lost her job and applied for Employment Insurance (EI) benefits in March 2012. The Canada Employment Insurance Commission (Commission) denied her application because she did not have enough hours of insurable employment.

[3] In June 2012, the Applicant was in a car accident. The Commission approved her for sickness benefits from September 9, 2012, to November 10, 2012.

[4] In October 2022, the Applicant asked the Commission to reconsider its denial of her March 2012 application for regular benefits and the amount of her September 2012 approval for sickness benefits.

[5] The Commission refused to consider the Applicant's requests because they were late. The Commission found that the requests came well after the 30-day time limit to request a reconsideration. It also found that the Applicant's explanation for the delay did not justify granting her an extension of time in which to request reconsideration.

[6] The Applicant appealed the Commission's refusals to this Tribunal's General Division. She insisted that she had had regularly contacted the Commission for updates for several years after 2012 but received no response.

[7] The General Division held a hearing by teleconference and dismissed the Appellant's appeal. It found that the Applicant's request for reconsideration was late, but it also found that the Commission did not treat her request for an extension of time in a judicial manner. It proceeded to make the decision that the Commission should have made: it found that the Applicant failed to meet all of the criteria required by law to get an extension of time in which to ask for reconsideration.

[8] The Applicant is now asking for permission to appeal the General Division's decision. She argues that the General Division made the following errors:

- It got important details wrong;
- It ignored evidence that the Commission failed to disclose important information that affected her rights;
- It ignored the fact that she made two EI applications — one in March 2012, the other in September 2012 — that were terminated without her knowledge or permission.

Issues

[9] After reviewing the Applicant's application for leave to appeal, I had to decide the following related questions:

- Was the Applicant's application for leave to appeal filed late?
- If so, should I grant the Applicant an extension of time?
- Does the Applicant have a reasonable chance of success on appeal?

[10] I have concluded that, although the Applicant was late in submitting her application for leave to appeal, she had a reasonable explanation for doing so. However, I am refusing the Applicant permission to proceed, because her appeal does not have a reasonable chance of success.

Analysis

The Applicant's request for leave to appeal was late

[11] An application for leave to appeal must be made to the Appeal Division within 30 days after the day on which the decision and reasons were communicated in writing to the applicant.[1] The Appeal Division may allow further time within which an application

[1] See section 57(1)(a) of the *Department of Employment and Social Development Act* (DESDA).

for leave to appeal is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the applicant.

[12] In this case, the General Division issued its decision on February 24, 2023. That same day, the Tribunal sent the decision to the Applicant by regular mail. The Tribunal did not receive the Applicant's application for leave to appeal until April 12, 2023 — approximately two weeks past the filing deadline. In her application, the Applicant said that she received the decision on March 9, 2023, but that still means the Applicant's application for leave to appeal was late by a few days.

The Applicant had reasonable explanation for the delay

[13] When an application for leave to appeal is submitted late, the Tribunal may grant the applicant an extension of time if they have a reasonable explanation for the delay.[2] In deciding whether to grant an extension, the interests of justice must be served.[3]

[14] In her application for leave to appeal, the Applicant took the trouble to explain why her appeal was late:

- She was unaware that appealing was an option;
- She had trouble determining what address to send her appeal to; and
- She needed a few extra days to download, print, and mail the necessary forms.

[15] The Applicant is unrepresented and, judging by her written submissions, she appears to have a less than perfect command of English. For those reasons, I find the Applicant's explanation for the delay reasonable. That's why I will consider her application even though it was late.

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[2] See section 27 of the *Social Security Tribunal Rules of Procedure*.
[3] See *Canada (Attorney General) v Larkman*, 2012 FCA 204.

The Applicant's appeal has no reasonable chance of success

[16] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.[4]

[17] Before the Applicant can move ahead with her appeal, I have to decide whether it has a reasonable chance of success.[5] Having a reasonable chance of success is the same thing as having an arguable case.[6] If the Applicant doesn't have an arguable case, this matter ends now.

[18] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Applicant does not have an arguable case.

– There is no case that the General Division mischaracterized important details

[19] The Applicant maintains that the General Division made significant factual errors about matters such as dates, the number of hours required to qualify for EI, and the criteria by which the Commissions closes a file due to activity.

[20] I don't see an argument for any of these points, because the Applicant did not specify what details the General Division got wrong. I have reviewed its written reasons and found nothing to suggest that the General Division based its decision on incorrect information.

[21] Stripped to its essentials, this case is simple. The Applicant unsuccessfully applied for regular benefits in March 2012 and successfully applied for sickness benefits

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[4] See DESDA, section 58(1).
[5] See DESDA, section 58(2).
[6] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

in September 2012. She did not request reconsideration of the Commission's decision on either application until many years later — long after the filing deadlines had come and gone.

[22] I have thoroughly examined the file looking for something that the General Division might have missed or misunderstood. I was unable to find anything that points to an error.

– There is no case that the General Division misinterpreted the law

[23] According to the *Employment Insurance Act*, a person who disagrees with the Commission's initial decision about their application has 30 days to ask the Commission to reconsider that decision.[7]

[24] The Commission may allow a longer period to request reconsideration if it is satisfied that (i) the person has a reasonable explanation for requesting a longer period and (ii) the person has demonstrated a continuing intention to request a reconsideration. The Commission must consider both criteria and be satisfied that they have been met.[8]

[25] If the request for reconsideration is made more than 365 days after the person was notified of the decision, the Commission must also be satisfied that (iii) the request has a reasonable chance of success and (iv) no prejudice would be caused to any party by allowing a longer period to make the request. The Commission must consider all four criteria and be satisfied that all of them have been met.[9]

[26] These restrictions aside, the Commission retains some degree of discretion in deciding whether to grant an extension. However, case law requires the Commission to exercise its discretion judicially.[10] The Federal Court has held that a discretionary power

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[7] Section 112(1) of the *Employment Insurance Act*.
[8] Section 1(1) of the *Reconsideration Request Regulations*
[9] Section 1(2) of the *Reconsideration Request Regulations.* See also *Lazure v Canada (Attorney General)*, 2018 FC 467. This case is about a similar four-part test contained in the *Canada Pension Plan* and its associated regulations, but its principle applies just as well to the EI Act and the *Reconsideration Request Regulations*.
[10] *Canada (Attorney General) v Uppal*, 2008 FCA 388.

is not exercised judicially if the decision-maker (i) acted in bad faith; (ii) acted for an improper purpose or motive; (iii) took into account an irrelevant factor; (iv) ignored a relevant factor; or (v) acted in a discriminatory manner.[11]

[27] In this case, the General Division decided that, while the Commission considered all four criteria, it did not exercise its discretion in a judicial manner. It found that, in refusing an extension of time, the Commission ignored a relevant factor: the Applicant's continued attempts to check on her file after 2014. It then gave the decision that the Commission should have given: it decided that, even though the Applicant periodically called the Commission until 2016, she still did not have a reasonable explanation for her delay in requesting reconsideration, nor did she have a continuing intention to do so.

[28] Having reviewed the file, I don't see how the General Division erred in making these findings.

– There is no case that the General Division ignored significant evidence

[29] The Applicant alleges that the General Division ignored evidence that the Commission failed to disclose important information affecting her rights

[30] I don't see an argument here.

[31] The Applicant has always maintained that the Commission treated her unfairly, but she has not explained how it did so, other than closing her files for inactivity.

[32] In its role as finder of fact, the General Division is entitled to some leeway in how it chooses to assess the available evidence.[12] In this case, the General Division examined the Applicant's EI claims and found that she essentially abandoned them after 2016. I see no reason to second-guess this finding.[13]

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[11] *Canada (Attorney General) v Purcell*, [1996] 1 FCR 644.
[12] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[13] Among the grounds of appeal for an EI decision is an erroneous finding of fact "made in a perverse or capricious manner or without regard for the material." See section 58(1)(c) of DESDA.

Conclusion

[33] For the above reasons, I am not satisfied that this appeal has a reasonable chance of success. Permission to appeal is therefore refused. That means the appeal will not proceed.

Neil Nawaz
Member, Appeal Division