



Citation: *LP v Canada Employment Insurance Commission*, 2023 SST 833

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: L. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 24, 2023
(GE-23-464)

Tribunal member: Neil Nawaz

Decision date: June 20, 2023

File number: AD-23-311

Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

Overview

[2] The Claimant was laid off from his job as a waiter in September 2020. He applied for Employment Insurance (EI) benefits, but the Canada Employment Insurance Commission (Commission) refused his application because it determined that he was not available for work.

[3] The Claimant asked the Commission to reconsider its refusal. In a letter dated May 7, 2021, the Commission maintained its decision not to grant the Claimant EI benefits.

[4] Nearly two years went by. On February 13, 2023, the Claimant appealed the Commission's reconsideration refusal to the Social Security Tribunal. The Tribunal's General Division dispensed with an oral hearing and decided the appeal by reviewing the documents on the file.

[5] In its decision, the General Division found that the Commission had verbally notified the Claimant of its reconsideration decision on May 6, 2021, followed by a letter sent by regular mail the following day. It also found that, since the Claimant's appeal was more than one year late, it could not accept the Claimant's appeal.

[6] The Claimant is now seeking permission to appeal the General Division's decision to the Appeal Division. He says that, although he knows about the one-year deadline, he would still like his case reviewed by someone with an "honest eye" who is willing to take into account the delays caused by Service Canada and the Canada Revenue Agency.

[7] I have decided to refuse the Claimant permission to appeal because his appeal does not have a reasonable chance of success.

Issue

[8] There are four grounds of appeal to the Appeal Division. An appellant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.¹

[9] Before the Claimant can proceed, I have to decide whether his appeal has a reasonable chance of success.² Having a reasonable chance of success is the same thing as having an arguable case.³ If the Claimant doesn't have an arguable case, this matter ends now.

[10] At this preliminary stage, I have to answer this question: Is there an arguable case that the General Division erred when it refused to accept the Claimant's appeal because of lateness?

Analysis

[11] I have reviewed the record, and I don't see an arguable case on any ground of appeal.

[12] Under the law, an appeal to the General Division must be submitted to the Tribunal within 30 days after the day on which the Commission's reconsideration decision was communicated to the claimant.⁴ The General Division may allow further time to make the appeal, but in no case can it be made more than one year after the day on which the reconsideration decision was communicated to the claimant.⁵

¹ See *Department of Employment and Social Development Act* (DESDA), section 58(1).

² See DESDA, section 58(2).

³ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁴ See DESDA, section 52(1)(a).

⁵ See DESDA, section 52(2).

[13] In this case, the General Division found that the notice of appeal was submitted to the Tribunal more than one year after the Claimant received the Commission's reconsideration letter. I can't see an arguable case that the General Division committed an error in making this finding.

[14] The record indicates that the Commission sent its reconsideration decision letter to the Claimant at his listed address on May 7, 2021.⁶ On his notice of appeal to the General Division, submitted on February 13, 2021, the Claimant indicated that he received the reconsideration letter on May 9, 2021.⁷

[15] Based on this information, the General Division found that the Commission had communicated its reconsideration letter to the Claimant in May 2021. I see no reason to second-guess this finding. The General Division reviewed the evidence and saw nothing to indicate that he had filed, or attempted to file, any document with either the Commission or the Tribunal until 21 months later — long after the 30-day "soft" and one-year "hard" deadlines.

[16] For appeals submitted more than one year after reconsideration, the law is strict and unambiguous. The governing legislation states that **in no case** may an appeal be brought more than one year after the reconsideration decision was communicated to a claimant. While extenuating circumstances may be considered for appeals that come after 30 days but within a year, the wording of the legislation all but eliminates scope for a decision-maker to exercise discretion once the year has elapsed. The Claimant's explanations for filing his appeal late are therefore rendered irrelevant, as are other factors, including the merits of his claim for benefits.

[17] It is unfortunate that missing a filing deadline may have cost the Claimant an opportunity to make an appeal, but the General Division was bound to follow the letter

⁶ See Commission's letter dated May 7, 2021, GD3-34.

⁷ See Claimant's notice of appeal dated stamped February 13, 2023, GD2-6.

of the law, and so am I. The Claimant may regard this outcome as unfair, but I can only exercise the powers given to me under the Appeal Division's enabling legislation.⁸

Conclusion

[18] For the above reasons, I find that the appeal has no reasonable chance of success.

[19] Permission to appeal is refused.

Neil Nawaz
Member, Appeal Division

⁸ This principle is explained further in a case called *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.