



[TRANSLATION]

Citation: *CL v Canada Employment Insurance Commission*, 2023 SST 954

Social Security Tribunal of Canada Appeal Division

Decision on Extension of Time and Application for Leave to Appeal

Applicant: C. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
March 29, 2023 (GE-22-2821)

Tribunal member: Pierre Lafontaine

Decision date: July 24, 2023

File number: AD-23-639

Decision

[1] An extension of time to apply to the Appeal Division is granted. But, permission to appeal is not granted. The appeal will not proceed.

Overview

[2] The Applicant (Claimant) made an initial claim for Employment Insurance (EI) regular benefits. A benefit period was established effective January 9, 2022.

[3] The Respondent (Commission) decided that the Claimant was disentitled to EI regular benefits as of January 9, 2022, because she was not available for work. Upon reconsideration, the Commission upheld its initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant had not shown a desire to go back to work as soon as a suitable job was available. It found that the Claimant had not shown enough effort to find a suitable job. The General Division found that the Claimant set personal conditions that might have unduly limited her chances of going back to work because she had to care for her husband. It found that the Claimant was not available for work within the meaning of the law.

[5] The Claimant now seeks permission from the Appeal Division to appeal the General Division decision. She finds the decision unfair. The Claimant says that no employer will hire her because of her age. She argues that she has to care for her sick husband who takes 27 pills per day.

Issues

[6] The issues are as follows:

- a) Was the application to the Appeal Division late?
- b) If the application is late, should I extend the time to apply?

- c) If I grant an extension of time, is there an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success?

Analysis

The application was made late

[7] The General Division decision was issued on March 29, 2023. It was emailed to the Claimant on the same day. The Claimant did not submit her application for permission to appeal until June 21, 2023.

I am extending the time for the application

[8] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for why the application is late.¹

[9] I am extending the time to apply because the Claimant has provided a reasonable explanation for the delay. She waited eight weeks before checking her emails because the General Division had mentioned this timeframe before making its decision. But, the General Division issued its decision seven days after the hearing.

I am not giving the Claimant permission to appeal

[10] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.

¹ See section 27(2) of the *Social Security Tribunal Rules of Procedure*.

4. The General Division made an error of law when making its decision.

[11] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case but must establish that her appeal has a reasonable chance of success. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[12] I will grant permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

[13] The Claimant finds the decision unfair. She says that no employer will hire her because of her age. She argues that she has to care for her sick husband who takes 27 pills per day.

[14] To be considered available for work, a claimant must show that they are capable of and available for work and unable to obtain a suitable job.

[15] Availability must be determined by analyzing three factors:

- a) wanting to go back to work as soon as a suitable job is available
- b) expressing that desire through efforts to find a suitable job
- c) not setting personal conditions that might unduly limit the chances of going back to work

[16] Also, availability is determined for each working day in a benefit period for which the claimant can prove that, on that day, they were capable of and available for work and unable to obtain a suitable job.

[17] The General Division found that the Claimant had not shown a desire to go back to work as soon as a suitable job was available. It found that the Claimant had not shown enough effort to find a suitable job. The General Division found that the Claimant

had set personal conditions that might have unduly limited her chances of going back to work because of having to care for her husband who is ill.

[18] The *Employment Insurance Act* (EI Act) says that to be entitled to benefits, a claimant must establish their availability for work and, to do so, they must actively look for work. A claimant must establish their availability for work for each working day in a benefit period and that availability must not be unduly limited.

[19] The Claimant argues that no employer will hire her given her age.

[20] No matter how little chance of success a claimant may feel they have in their job search, the EI program is designed so that only those who are truly unemployed and actively looking for work receive benefits.

[21] I am of the view that the evidence supports, on a balance of probabilities, the General Division's finding that the Claimant was not available and unable to find a suitable job from January 9, 2022, since the Claimant was not actively looking for a job and her availability was unduly restricted by the fact that she has to care for her husband.

[22] I sympathize with the Claimant who has to care for her husband who is ill. Unfortunately, the Tribunal cannot waive the law even on humanitarian grounds.

[23] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

Conclusion

[24] An extension of time to apply to the Appeal Division is granted. Permission to appeal is not granted. This means that the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division