



Citation: *GF v Canada Employment Insurance Commission*, 2023 SST 838

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: G. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 17, 2022
(GE-22-2338)

Tribunal member: Neil Nawaz

Decision date: June 26, 2023

File number: AD-23-284

Decision

[1] The Claimant's application requesting permission to appeal was filed late. Since the Claimant does not have a reasonable explanation for the delay, this appeal will not be going forward.

Overview

[2] The Claimant, G. F., is appealing a General Division decision to deny him Employment Insurance (EI) benefits.

[3] The Claimant worked as a radio technician for the X (X). On November 21, 2021, the X placed him on an unpaid leave of absence after he refused to get vaccinated for COVID-19. At the time, the X informed the Claimant that, if he was still not compliant with the policy by December 31, 2021, his employment would be terminated altogether.

[4] On December 1, 2021, the Claimant resigned from his job to preserve his future access to retirement benefits. He says that these benefits would have been denied to him had he been terminated for cause.

[5] The Canada Employment Insurance Commission (Commission) decided that it didn't have to pay the Claimant EI benefits because he voluntarily left his job without just cause.

[6] The Claimant appealed the Commission's decision to this Tribunal's General Division. It agreed with the Commission and found that the Claimant had reasonable alternatives to leaving his employment.

[7] The Claimant is now requesting permission to appeal the General Division's decision. He alleges that the General Division ignored an important precedent involving a situation similar to his own. He says that the General Division allowed another claimant to collect EI even though, like him, she had been suspended for refusing the COVID-19 vaccine.

Issues

[8] After reviewing the Claimant's request for permission to appeal, I had to decide these questions:

- Was the Claimant's application for leave to appeal filed late?
- If so, does the Claimant have a reasonable explanation for the delay?

[9] I have concluded that the Claimant's application for permission to appeal was late. I am refusing the Claimant permission to proceed, because the Claimant did not offer a reasonable explanation for missing the appeal deadline.

Analysis

The Claimant's request for leave to appeal was late

[10] An application for leave to appeal must be made to the Appeal Division within 30 days after the day on which the decision was communicated to the applicant.¹ The Appeal Division may allow further time to make an application for leave to appeal, 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.

[11] In this case, the General Division issued its decision on November 17, 2022, and the Tribunal sent the decision to the Claimant by regular mail on the same day. The Appeal Division did not receive the Claimant's application for leave to appeal until March 21, 2023 — approximately three months past the filing deadline.

[12] I find that the Claimant's application for leave to appeal was late.

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

The Claimant did not have a 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 his application requesting permission to appeal, the Claimant explained why he was late. He said that he had recently become aware of a case called *A.L.*, in which another member of the General Division took a different approach to the law around misconduct — one that favoured EI claimants who had refused to follow their employer's vaccine mandate.⁴

[15] For a number of reasons, I don't find this explanation reasonable.

[16] First, case law suggest that a late appeal cannot be excused by a claimant's belated discovery of a decision favouring their position.⁵

[17] In any event, *A.L.* was issued on December 14, 2022 — nearly a month after the General Division issued its decision in the Claimant's appeal. The member who heard the Claimant's appeal therefore can't faulted for failing to consider a case, or line of legal analysis, that didn't yet exist.

[18] Moreover, *A.L.*, like the Claimant's case, was decided by the General Division. Even if the member who heard the Claimant's case had considered *A.L.*, she would have been under no obligation to follow it. Members of the General Division are bound by decisions of the Federal Court and the Federal Court of Appeal, but they are not bound by decisions of their peers.

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

³ See *Canada (Attorney General) v Larkman*, 2012 FCA 204.

⁴ See *A.L. v Canada Employment Insurance Commission*, 2022 SST 1428. In his submissions, the Claimant referred to this case by its file number: AD-22-1889.

⁵ See *Canada (Attorney General) v Plourde*, October 1, 1990, F.C.J. No. 944 (FCA) A-80-90 and *Carrier v Canada Employment Insurance Commission*, February 1, 1996, F.C.J. No. 132 (FCTD) T-370-95.

[19] On top of that, the General Division didn't decide the Claimant's appeal on the issue of misconduct, which is the subject of *A.L.* It's true that the Claimant was facing suspension because he refused to comply with his employer's vaccination policy, but he ultimately left his job by resigning from the X. The Commission refused the Claimant EI benefits, not because of misconduct, but because he failed to demonstrate that he had just cause for leaving his employment. Since the Commission's decision was about just cause, so too was the General Division's.

[20] Above all, *A.L.* does not, as the Claimant seems to think it does, give EI claimants a blanket exemption from their employers' mandatory vaccine policies. *A.L.* appears to have involved a claimant whose collective agreement **explicitly** prevented her employer from forcing her to get vaccinated. According to my review of this file, the Claimant has never pointed to a comparable provision in his own employment contract. In a recent case called *Cecchetto*, the Federal Court considered *A.L.* in passing and suggested that it would not have broad applicability because it was based on a very particular set of facts.⁶

Conclusion

[21] This appeal won't be proceeding because the Claimant submitted it well past the filing deadline and failed to offer a reasonable explanation for the delay.

Neil Nawaz
Member, Appeal Division

⁶ See *Cecchetto v Canada (Attorney General)*, 2023 FC 102, at paragraph 43.