Citation: *EL v Canada Employment Insurance Commission*, 2023 SST 968

Social Security Tribunal of Canada
Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant:	E. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated April 4, 2023 (GE-22-1252)

Tribunal member:	Jude Samson
Decision date:	July 24, 2023
File number:	AD-23-630

Decision

[1] The Claimant, E. L., filed an application to the Appeal Division. I'm dismissing her application as premature. The application will not proceed.

Overview

[2] The Claimant applied for Employment Insurance (EI) regular benefits after losing her job. Then she applied for 15 weeks of maternity benefits and 35 weeks of parental benefits. However, the Canada Employment Insurance Commission (Commission) decided that the Claimant could only receive 13 weeks of parental benefits because that's when her benefit period was ending.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. She also claimed that the law violated her rights under the *Canadian Charter of Rights and Freedoms* (Charter).

[4] Charter appeals at the Tribunal follow a special process. Specifically, applicants have to file a notice setting out the parts of the law that are being challenged, along with the outline of a Charter argument.

[5] In this case, the General Division concluded that the Claimant's notice was lacking. So, she was given an extra six months to fix it. However, the General Division concluded that the Claimant's notice still failed to set out a coherent narrative explaining how the law violated her Charter rights.[1] As a result, the General Division decided that the Claimant's appeal would proceed as a regular appeal, and not as a Charter appeal.

[6] The Claimant now wants to appeal the General Division decision about the way her appeal will proceed.

[7] I'm dismissing the Claimant's application as premature.

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[1] See *Canada (Attorney General) v Stewart*, 2018 FC 768, and *Minister of Employment and Social Development v SR and DR*, 2018 SST 786.

Issues

[8] The issues in this appeal are:

a) Was the application to the Appeal Division late?

b) Should I extend the time for filing the application?

c) Should the Appeal Division consider appeals of interlocutory decisions before the end of the General Division's process?

d) Are there exceptional circumstances in this case that justify allowing the Claimant's application to proceed?

Analysis

The application was late

[9] The General Division decision is dated April 4, 2023, and the Claimant admits that she received it the same day.[2] As a result, her application was due 30 days later, on May 4, 2023.[3]

[10] Instead, however, the Tribunal received the Claimant's application on June 14, 2023, so it was late.

I am extending the time for filing the application

[11] When deciding whether to give the Claimant more time to file her application, I have to consider whether she has a reasonable explanation for why she was late.[4]

[12] The Claimant says that the April 4, 2023, decision didn't tell her about her appeal rights. Instead, she only learned that she could challenge the decision in the General

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[2] See page ADN1-2 in the appeal record.
[3] See section 57(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).
[4] See section 27(2) of the *Social Security Tribunal Rules of Procedure.*

Division's letter dated May 31, 2023.[5] In the circumstances, the Claimant has provided a reasonable explanation for the delay.

The Claimant's application is premature and should not proceed

[13] The Tribunal can make interlocutory (or interim) decisions throughout a proceeding. For example, someone might ask for their hearing to be rescheduled or for documents to be kept confidential. Interlocutory decisions are often procedural in nature. They're different from final decisions that bring an appeal to its end.

– The Appeal Division normally refuses to hear appeals from interlocutory decisions

[14] Any General Division decision can be appealed to the Appeal Division.[6] However, the Appeal Division has the power to control its procedures. This includes the ability to not hear appeals that are premature.[7] For that reason, the Appeal Division has said that, except in exceptional circumstances, it will refuse to consider appeals of interlocutory decisions until the General Division has given its final decision in the appeal.[8]

[15] This doesn't mean that the Appeal Division refuses to consider interlocutory decisions altogether. Instead, the General Division proceeding should be allowed to run its course. Then the Appeal Division can consider all issues at the same time, based on a complete record.

[16] I agree with the reasoning in these Appeal Division decisions and have decided to follow them.

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[5] See document RGD14 in the appeal record.
[6] See section 55 of the DESD Act.
[7] See *Prassad v Canada (Minister of Employment and Immigration)*, 1989 CanLII 131.
[8] See *MW v Canada Employment Insurance Commission*, 2022 SST 338 and *RP v Minister of Employment and Social Development*, 2022 SST 242.

– **There are no exceptional circumstances in this case**

[17] So, are there exceptional circumstances that justify considering the Claimant's application now instead of waiting until the General Division gives its final decision in her appeal? If not, the application is premature.

[18] A similar issue arises at the Federal Court of Appeal. However, they too allow few applications to proceed until the Tribunal below has completed its process.[9] In fact, the Court has said that important legal or constitutional issues are not an exceptional circumstance that justifies interfering with an ongoing proceeding.[10] I agree.

[19] Allowing the Claimant to appeal any unfavourable interlocutory decisions the General Division might make would unnecessarily fragment the General Division's process and lead to significant delays.

[20] In the circumstances, the Claimant hasn't shown exceptional circumstances that justify considering her application now. The General Division should be allowed to finish its work and give a final decision in the appeal.

Conclusion

[21] I'm dismissing the Claimant's application as premature. The Appeal Division shouldn't normally hear appeals from interlocutory decisions. The Claimant hasn't shown exceptional circumstances for proceeding sooner in her case.

[22] Once the General Division gives its final decision, the Claimant can, of course, bring another application to the Appeal Division. And in her application, she remains free to argue that the General Division member was wrong to conclude that her appeal couldn't proceed as a Charter appeal.

Jude Samson
Member, Appeal Division

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[9] See *Dugré v Canada (Attorney General)*, 2021 FCA 8 and *Herbert v Canada (Attorney General)*, 2022 FCA 11.
[10] See *Canada (Border Services Agency)* v *CB Powell Limited*, 2010 FCA 61 at paragraph 33.