



Citation: *TW v Canada Employment Insurance Commission*, 2023 SST 1015

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: T. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 22, 2022
(GE-22-281)

Tribunal member: Janet Lew

Decision date: July 31, 2023

File number: AD-23-644

Decision

[1] An extension of time to apply to the Appeal Division is refused. The application will not proceed.

Overview

[2] The Applicant, T. W. (Claimant), is appealing the General Division decision. The General Division found that the Respondent, the Canada Employment Insurance Commission proved that the Claimant had been suspended from her employment because of misconduct. It found that she did something that caused her to be suspended. She had not complied with her employer's COVID-19 vaccination policy. As a result of the misconduct, the Claimant was disqualified from receiving Employment Insurance benefits.

[3] The Claimant argues that "new information has come to light."¹ She says this information proves that her employer wrongfully dismissed her. The Claimant obtained a default judgment against her employer. The Court ordered the employer to pay damages to the Claimant for wrongful dismissal.²

[4] The Claimant has not otherwise identified any grounds of appeal. Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success. But first, there is the issue about whether the Claimant filed her Application to the Appeal Division on time.

Issues

[5] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) Can I extend the time for filing the application?

¹ Application to the Appeal Division – Employment Insurance, at AD 1-3.

² Unsigned and unstamped copy of draft Court Order, at AD 1B-2.

Analysis

The application was late

[6] The General Division issued its decision on March 22, 2022. The Claimant states that she received the General Division decision that same day.³

[7] The Claimant had 30 days after getting the General Division decision within which to file an Application to the Appeal Division.⁴ As she received the decision on March 22, 2022, she should have filed an application by no later than April 21, 2022.

[8] The Claimant did not file an Application to the Appeal Division – Employment Insurance until June 22, 2023. This was more than 450 days after she got the General Division decision. The Claimant’s application was clearly late.

I cannot extend the time for filing the application

[9] In some cases, the Appeal Division can extend the time to file an application. But the Appeal Division is powerless to extend the time if an application is made more than one year after the day on which the decision and reasons were communicated in writing to the applicant.⁵

[10] Because the Claimant was more than a year late in filing an application, it leaves me without any power to consider whether I should grant an extension to the Claimant. There are no exceptions to this rule, even if the Claimant were to have had an arguable case that the General Division made a jurisdictional, procedural, legal, or factual error.

[11] The Federal Court confirmed this interpretation. As it held in a case called *Conte*, section 57(2) of the *Department of Employment and Social Development Act* deprives

³ Application to the Appeal Division – Employment Insurance, at AD 1-2.

⁴ See subsection 57(1)(a) of the *Department of Employment and Social Development Act* (DESD Act). The subsection says that an application to the Appeal Division has to be made within 30 days after the day on which it is communicated in writing to an appellant.

⁵ See section 57(2) of the DESD Act, which says an extension can be allowed, but “in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.”

the Appeal Division of any power to provide an extension of time beyond the one-year limitation prescribed by statute.⁶

[12] As the Claimant's application comes too late, there is no basis to consider the substance of any of her arguments.

The Claimant's new evidence

[13] The Appeal Division generally does not consider new evidence, such as the Claimant's default judgment against her employer. The Appeal Division generally can consider only the facts that were before the General Division.

[14] Setting aside this consideration, the Claimant received an order for damages for wrongful dismissal. Collecting the damages from her former employer may be an issue for the Claimant but that matter is irrelevant to the issue of entitlement to Employment Insurance benefits. Notionally, the Claimant has been placed in the same position as if the dismissal had not occurred. It would be treated as if she had not been separated from her employment. Without a separation, she would not be entitled to receive Employment Insurance benefits.

Conclusion

[15] The Claimant's application to the Appeal Division comes too late. As she filed more than a year late, I am left without any power to consider whether to grant an extension of time. Her application is thus refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

⁶ See *Conte v Canada (Attorney General)*, 2021 FC 1182. See also *Mahmood v Canada (Attorney General)*, 2016 FC 487.