



Citation: *KM v Canada Employment Insurance Commission*, 2023 SST 1213

## **Social Security Tribunal of Canada Appeal Division**

### **Extension of Time Decision**

<b>Applicant:</b>	K. M.
<b>Respondent:</b>	Canada Employment Insurance Commission
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<b>Decision under appeal:</b>	General Division decision dated March 2, 2023 (GE-22-2500)
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<b>Tribunal member:</b>	Janet Lew
<b>Decision date:</b>	September 6, 2023
<b>File number:</b>	AD-23-695

## Decision

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

## Overview

[2] The Applicant, K. M. (Claimant), is seeking leave (permission) to appeal the General Division decision.

[3] The General Division found that the Claimant was unavailable for work after January 2, 2021. It found that she had not shown a desire to return to the labour market as soon as suitable employment was offered. It also found that she had not made reasonable and customary efforts to obtain work. It also found that she set personal conditions that could unduly limit her chances of returning to the labour market.

[4] The Claimant does not challenge the General Division's findings regarding her availability. However, she argues that the General Division overlooked some of the evidence. In particular, she says that it failed to consider the fact that Service Canada should have re-directed her from the Employment Insurance program to the Canada Emergency Response Benefit (CERB) under Canada Revenue Agency. She argues that as a Canadian citizen and taxpayer, she is entitled to benefits, especially since her income loss was related to the pandemic.

[5] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.<sup>1</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>2</sup>

[6] There is also the issue about whether the Claimant filed her application to the Appeal Division on time. If the Claimant was late with her application, then she has to

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<sup>1</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>2</sup> Under section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

get an extension of time. She has to get an extension of time before I can even consider her application for leave to appeal. If she does not get an extension of time, this ends her appeal.

## Issues

[7] The issues are as follows:

- i. Was the application to the Appeal Division late?
- ii. If so, should I extend the time for filing the application?
- iii. If I extend the time, does the Claimant have an arguable case?

## Analysis

### The application was late

[8] The Claimant acknowledges that she filed an application after the 30-day deadline.<sup>3</sup> The Claimant suggests that her application should not be considered late because she had already filed an application by mail. She claims that she phoned the Social Security Tribunal (Tribunal) three weeks later and learned that it apparently did not receive her first application. So, she filed another application.

[9] The Claimant says she received the General Division decision on March 2, 2023. So, she had to file an application by no later than April 1, 2023. She does not say when she filed her first application. But assuming that she filed her first application by the deadline on April 1, 2023, and then called the Tribunal three weeks later, I calculate that she called the Tribunal towards the end of April 2023.

[10] Having learned that the Tribunal had not received her application, the Claimant should have immediately filed another application and certainly within 30 days. She

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<sup>3</sup> See section 57(1)(a) of the DESD Act. The section says that an application for leave to appeal must be made to the Appeal Division 30 days after the day on which the decision made by the Employment Insurance Section is communicated to the appellant.

should have filed her application by no later than the end of May 2023. However, she did not file her second application until July 11, 2023.

[11] Because the Claimant did not file her application on time, she has to get an extension of time. If the Appeal Division does not grant an extension of time, this would mean that the Appeal Division would not be considering the Claimant's application for leave to appeal. This would also end the Claimant's appeal of the General Division decision.

### **I am not extending the time for filing the application**

[12] The Appeal Division may grant an extension to file if an application is late by not more than one year.<sup>4</sup> The Appeal Division gives more time to appeal if an appellant has a reasonable explanation for why the application is late.<sup>5</sup>

[13] If the Claimant had filed her application immediately upon learning that the Tribunal had not received her first application, I would have accepted that the Claimant had a reasonable explanation for being late. But she does not explain the further delay between learning the Tribunal had not received her first application, and when she filed her second application.

[14] It may be that the Claimant filed her second application within 30 days of learning that the Tribunal had not received her first application. But, if that is the case, that means that she was already late when she filed her first application.

[15] As I find that the Claimant does not have a reasonable explanation, I am not extending the time for filing the application.

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<sup>4</sup> See section 57(2) of the DESD Act.

<sup>5</sup> It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

## **The Claimant does not have an arguable case**

[16] Even if I had extended the time for filing the application, I would have found that the Claimant does not have an arguable case. So, I would not have given her permission to move ahead with her appeal.

[17] The Claimant argues that the General Division overlooked the fact that Service Canada, Canada Revenue Agency, or someone should have redirected her to CERB, as she would have been eligible for benefits under that program.

[18] The issue of the availability of or entitlement to CERB is irrelevant to the question of the Claimant's availability for work, which was the issue before the General Division. So, the General Division did not fail to consider this evidence in determining whether the Claimant was available for work for the purposes of the *Employment Insurance Act*.

[19] Even if the General Division had considered the fact that no one had redirected the Claimant to the CERB program, there would have been no basis upon which the General Division could have found the Claimant entitled to receive benefits, whether Employment Insurance benefits or the CERB.

[20] The General Division found that the Claimant simply did not meet the requirements to qualify for Employment Insurance benefits. So, it could not find that she was entitled to receive them.

[21] As for CERB, setting aside the fact that CERB has ended, the General Division does not have any jurisdiction over CERB, so it would have been unable to decide the Claimant's entitlement to CERB.

## **The Claimant's options**

[22] The General Division set out the Claimant's options and contact information regarding any overpayment. Any Notice of Debt that she may have or will receive will also have this information.

[23] If the Claimant has not already done so, I would encourage her to contact the Canada Revenue Agency about repayment options, or to write to the Commission about having the debt written off or reduced if she is experiencing any financial hardship.

## **Conclusion**

[24] I have not given the Claimant an extension of time to apply to the Appeal Division. This means that the application will not be going ahead.

Janet Lew  
Member, Appeal Division