



Citation: *SC v Canada Employment Insurance Commission*, 2023 SST 1215

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: S. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 6, 2022
(GE-22-2918)

Tribunal member: Stephen Bergen

Decision date: **September 6, 2023**

File number: AD-23-652

Decision

[1] I am refusing the application for an extension of time to apply to the Appeal Division. The application will not proceed.

Overview

[2] S. C. is the Applicant. She applied for Employment Insurance (EI) benefits so I will call her the Claimant. The Claimant collected EI benefits while she was a full-time student. When the Commission investigated her circumstances, it determined that she should not have been entitled to receive benefits because she was not available for work. It informed the Claimant that she had been overpaid and would have to pay the Commission back. The Claimant asked the Commission to reconsider, but it would not change its decision.

[3] The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal), but the General Division dismissed her appeal. The Claimant filed an application to the Appeal Division.

[4] The Claimant's application is late. I am not granting an extension of time because the Claimant has not given a reasonable explanation for why her application is late.

Issues

[5] 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?

Analysis

The application was late

[6] In her Notice of Appeal to the General Division, the Claimant authorized the Tribunal to communicate with her by email. The General Division issued its decision on December 6, 2022, and sent it to the Claimant by email the same day.

[7] In her application to the Appeal Division, the Claimant wrote that she received the decision on December 6, 2022. There is nothing in the file to suggest otherwise. I accept that she received the decision by email on December 6, 2022.

[8] The deadline to appeal a decision of the General Division to the Appeal Division is 30 days from the date that it is communicated in writing. The deadline was January 5, 2023, 30 days from December 6, 2022.

[9] The Appeal Division received the Claimant's appeal on June 26, 2023.

[10] The appeal is late.

I am not extending the time for filing the application

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

[12] The Appeal Division received the Claimant's application as an email on June 26, 2023. The email attached pictures of her completed application form. The Claimant said that she was also sending the original by regular mail.

[13] In the introduction to her emailed application, she stated that she had sent another copy of the application by mail on February 27, 2023. She describes the earlier application as her "1st appeal form."

[14] On the second application form (the one which the Appeal Division received), the Claimant explained that she called the Tribunal on February 27, 2023, and that the Tribunal sent her the form. The Tribunal's telephone log confirms that the Claimant called on February 27 asking for information about appealing and that the Tribunal emailed her the form. The Claimant said that she completed the form and sent it back immediately.²

¹ It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

² See AD1-5.

[15] At the signature block of the second application form, the Claimant wrote that she “sent out the original appeal” on February 27, 2023, and that she “resent it” on June 26, 2023.³

[16] The Claimant also asserts that she sent the original application by mail but that she had changed her address, so she has no proof it was returned to her undelivered. Even though the Claimant has no other evidence that she mailed the Tribunal an application on February 27, 2023, I have no reason to disbelieve that she sent it by mail, and I am satisfied that she did so. This action is consistent with the manner of her second application – where she sent the Tribunal pictures of her application, saying that she was sending the original by mail. The Tribunal did not receive the original of the second application either.

[17] The Claimant has given a reasonable explanation for why the Tribunal did not receive her application between February 27 and June 26, 2023. However, the Claimant has never explained why she did not file her application by the January 5, 2023, deadline. By the time she called the Tribunal on February 27, her application was already late. The Tribunal told her this during the call.

[18] In the Claimant’s application, she noted that she had tried to call the Commission repeatedly, and left voice mails. It appears she meant to talk about her “financial hardship.”⁴ She does not say over what period she placed these calls, what she hoped to accomplish by discussing her claim or appeal with the Commission (when the General Division had upheld the Commission’s decision), or the date on which she believed her application was due.

[19] The General Division sent its December 6, 2022, decision to her with a letter that explained that she had 30 days to submit her application to the Appeal Division. It provided a link to the application form, and also provided the Tribunal’s contact information.

³ See AD1-6.

⁴ Supra note 2.

[20] When the Claimant discussed how she tried to reach the Commission, she acknowledged that she was aware of an imminent deadline. She said that she indicated – perhaps, in her voice mail messages - that her “application deadline was approaching.” If she did not know how to proceed with her appeal until she called the Tribunal on February 27, she could have called the Tribunal earlier.

[21] I wrote to the Claimant on August 22, 2023, to give her another opportunity to explain why her application was late and why her explanation is reasonable. I also asked her to explain in more detail why she was appealing the General Division decision.

[22] The Claimant responded to my letter on September 1, 2023. She talked about why she was appealing, but she did not give any more detail about why her application was late or why her explanation was reasonable.

[23] The Claimant has not given any explanation, let alone a reasonable one, to explain the delay between January 5, 2023, and February 27, 2023. Without a reasonable explanation, I cannot grant the Claimant an extension of time to apply to the Appeal Division.

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 proceed.

Stephen Bergen
Member, Appeal Division