



Citation: *CF v Canada Employment Insurance Commission*, 2023 SST 270

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: C. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 10, 2023
(GE-22-3397)

Tribunal member: Stephen Bergen

Decision date: **September 22, 2023**

File number: AD-23-655

Decision

[1] I am granting the extension of time to apply to the Appeal Division. However, I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] C. F. is the Applicant. I will refer to her as the Claimant because she made a claim for Employment Insurance (EI) benefits. The Claimant's employer laid her because of the Covid-19 pandemic. She applied for regular benefits on March 16, 2020, but the Respondent, the Canada Employment Commission (Commission), instead paid her the Employment Insurance emergency Response Benefit (ERB). As part of the ERB program, the Commission immediately advanced her \$2000.00 on April 6, 2020, with the expectation that it would recover it out of her benefit entitlement later. The Claimant was recalled to work after six weeks, before the Commission had a chance to recover the advance.

[3] The Commission declared an overpayment of \$2000.00 and told the Claimant that she must pay it back. The Claimant disagreed and asked for a reconsideration. The Commission would not change its decision.

[4] The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal), but the General Division denied her appeal. She is now asking the Appeal Division for leave to appeal, but her application is late.

[5] The Claimant has a reasonable explanation for why her appeal is late, so I have considered her application. However, I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division acted unfairly.

Issues

[6] 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) Is there an arguable case that the General Division acted unfairly by not sending the Claimant all the documents she needed to prepare for the hearing?

Analysis

The application was late

[7] 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 May 10, 2023, and sent it to the Claimant by email the same day.

[8] Where the Tribunal sends a document to a party by email, its *Rules* state that it will consider the document to be received on the next business day, unless the party can show that this rule should not apply to them.¹

[9] In her application to the Appeal Division, the Claimant noted that she did not remember when she received the General Division decision. I wrote to her on September 8, 2023, asking her to tell me more about when she received the decision and why she did not file her application on time. The Claimant responded but did not provide any additional details. A Registry Officer from the Appeal Division followed up by phone on September 14, 2023, but the Claimant said she had already said all she had to say.

[10] I find that the Claimant received the decision on May 11, 2023, which is the next business day after it was emailed. The Claimant has not given me any reason to find otherwise.

[11] The deadline to appeal a General Division decision to the Appeal Division is 30 days from the date that it is communicated in writing. The deadline was June 10, 2023, which is 30 days from May 11, 2023.

¹ It says this in section 22(3) and (4) of the *Social Security Tribunal Rules of Procedure* Social Security Tribunal Rules of Procedure.

[12] The Tribunal only received the Claimant's Application to the Appeal Division on June 17, 2023. The application was missing pages, and the Tribunal did not receive a complete application until July 20, 2023.

[13] The appeal is late.

I am extending the time for filing the application

[14] 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.²

[15] The Claimant explained that she tried to email the form but received a return email that her email (or possibly its attachment) could not be opened. She said that the application form was then mailed to her because she explained she is not good with computers. She returned the completed application by fax.

[16] The Claimant did not say when she first tried to email her application or to whom. She did not say who told her it could not be opened or when she learned this. She did not say when she received a copy of the application form in the mail.

[17] The Tribunal's telephone logs have no record of any conversation with the Claimant before the Tribunal received the initial application on June 17, 2023.

[18] Despite the Tribunal's repeated efforts to obtain more detail, the Claimant has added nothing to her explanation.

[19] However, the Claimant's initial application was only 17 days late. It is plausible that the Claimant experienced the difficulties she described, and that the delays—including the delay in receiving the form by mail—might have resulted in the relatively short delay.

[20] I accept that the Claimant has a reasonable explanation for the delay.

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

I am refusing the Claimant leave to appeal

– General Principles

[21] For the Claimant's application for leave to appeal to succeed, her reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[22] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.³

[23] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."⁴

– Procedural fairness

[24] Procedural fairness is about the fairness of the process, not the decision. It includes procedural protections such as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against them. A failure to disclose documents to a party would not be fair because it could interfere with the party's ability to know the case.

[25] There is no arguable case that the General Division acted unfairly.

³ This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

⁴ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[26] The Claimant asserts that the process was unfair because relevant documents were not disclosed to her before the hearing. The General Division acknowledged the disclosure problem in the hearing and in its decision. However, it took appropriate steps to ensure the process was fair.

[27] The General Division offered the Claimant options for proceeding, and the Claimant did not object to say that none of the options were fair. One of the offered options was an adjournment of the hearing. This would allow her to receive and review the missing documents before having the hearing on another day. This option would have absolutely remedied the Claimant's concern about the prejudice from non-disclosure.

[28] The Claimant freely chose a different option. She wanted to proceed with the opportunity to provide post-hearing submissions after she reviewed the missing documents. This option substantially mitigated the prejudice of not having those documents before the hearing. However, the Claimant chose not to supply post-hearing submissions.

[29] There is no arguable case that the General Division obstructed the Claimant's right to be heard or her right to know the case. She did not have certain documents on the original date of the oral hearing, but she could have chosen to delay the hearing until after she received them, or to respond to the documents between the hearing and the decision.

[30] I understand that the Claimant likely believes that the decision was unfair because she disagrees with the result. In her Application to the Appeal Division, she says that it was unfair for the Commission to switch her to ERB, when she applied for regular EI. She made the same argument to the General Division. She also argues that something about the benefit waiting period was unfair, although this is unclear.

[31] However, this does not suggest that the General Division made an error of procedural fairness.

[32] I can only intervene in a decision of the General Division if I find that the General Division made certain kinds of errors, which I have discussed. I cannot re-evaluate or reweigh the evidence to reach a different result.⁵

– **Possible errors of fact**

[33] The only ground of appeal selected by the Claimant involves her assertion of a natural justice error. However, I have reviewed the record to see if the General Division may have ignored or misunderstood relevant evidence that could have been significant. The Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal where the applicant is self-represented.⁶

[34] Unfortunately, I have not discovered any significant evidence that the General Division ignored or misunderstood. There is no arguable case that the General division made an important error of fact.

[35] The Claimant's appeal has no reasonable chance of success.

Conclusion

[36] I granted the Claimant's extension of time, but I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

⁵ See for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.

⁶ *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.