



Citation: *DN v Canada Employment Insurance Commission*, 2023 SST 122

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: D. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 9, 2023
(GE-22-3834)

Tribunal member: Janet Lew

Decision date: September 20, 2023

File number: AD-23-658

Decision

[1] An extension of time to apply to the Appeal Division is granted. Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, D. N. (Claimant) is seeking leave (permission) to appeal the General Division decision. The General Division dismissed the Claimant's appeal.

[3] The General Division found that the Claimant had not shown good cause for her delay in claiming Employment Insurance benefits. She had not provided an explanation that the law accepts. As a result, the General Division did not treat her claim as if she had made it earlier. So, she was not entitled to receive Employment Insurance benefits.

[4] The Claimant argues that the General Division made a major error of fact. She argues that the General Division overlooked an important piece of evidence when it assessed whether she had good cause.

[5] She claims that the Respondent, the Canada Employment Insurance Commission (Commission) misinformed her that no further Employment Insurance benefits were available to her. So, she believed that there was no point in making a claim for benefits. She says that if the General Division had considered this evidence, it would have accepted that she had good cause for the delay.

[6] 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.¹ If the appeal does not have a reasonable chance of success, this ends the matter.²

[7] 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

¹ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² Under section 58(2) of the *Department of Employment and Social Development Act*, I am required to refuse permission if 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

[8] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) If so, should I extend the time for filing the application?
- c) If I extend the time, does the Claimant have an arguable case that the General Division overlooked an important piece of evidence?

Analysis

The application was late

[9] The Claimant states that she received the General Division decision on May 24, 2023. She had 30 days within which to bring an application to the Appeal Division. She had until June 23, 2023 to file an application. She filed her application on June 28, 2023. Therefore, she was five days late with her application to the Appeal Division.

I am extending the time for filing the application

[10] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for why the application is late.³

[11] The Claimant says that she was late because she was unable to access a scanner on time. She needed a scanner to scan her application and a copy of the General Division decision. She says that by the time she realized that she could not access a scanner, it would have been too late to try to mail her application. I accept this

³ It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

as a reasonable explanation for the Claimant's delay in filing her application to the Appeal Division.

I am not giving the Claimant permission to appeal

[12] The Claimant argues that the General Division overlooked important information. She says that the General Division overlooked the fact that the Commission gave her the wrong information. She claims that the Commission told her that she had exhausted all Employment Insurance benefits. She had received the maximum number of weeks of sickness benefits. But she did not realize that she may have been entitled to receive regular benefits as well.

[13] Because of the information she says the Commission gave her, the Claimant did not file her claim for benefits on time. She says that she had good cause for the delay because of the misinformation she got from the Commission. She says that if the Commission had not given her this misinformation, she would have promptly filed her claim for benefits.

[14] Some background information is necessary. The Claimant filed her claim for benefits on August 24, 2022. She is looking to backdate her claim. Initially, she sought to backdate her claim to February 20, 2022, when her employer placed her on a leave of absence for not following its COVID-19 vaccination policy.

[15] The Claimant began looking for work on April 1, 2022. The Claimant told the General Division that she wanted to backdate her claim instead to April 1, 2022.

[16] So, based on this background information, the Claimant would have had to show that she had good cause throughout the period from April 1, 2022 to August 24, 2022. If she says that the Commission gave her misinformation that caused her to delay making a claim until August 24, 2022, then she would have had to have received this information before April 1, 2022.

[17] However, the evidence on file does not support the Claimant's recollection:

- When she spoke with the Commission on September 9, 2022, she did not mention anything about the Commission giving her incorrect information.⁴
- She reported that when she tried to call the Commission before August, she could not get through.⁵
- In her Request for Reconsideration, she explained that "Human Resources and Union Rep communicated to [her] that [she] was only eligible for sick benefits. [She] only learned of other benefits Aug 23/22. from Service Canada office."⁶
- She reported that she did not contact the Commission at any time between the end of her sickness benefits and when she filed her application on August 23, 2022. She stated that she did not "think to and was going based on information her employer gave her."⁷
- The Claimant testified that she did not contact the Commission at any time before August 23, 2022.⁸

[18] In her Notice of Appeal to the General Division, the Claimant wrote that she had been under the impression that she was ineligible for Employment Insurance benefits. She believed that those like her who were suspended from work for not getting vaccinated were ineligible for benefits. She wrote:

Employment Minister Carla Qualtrough and the Government of Canada guidelines clearly indicate they don't want the E.I. system to subsidize individuals who are terminated or placed on leave of absence due to refusal to be vaccinated without medical or other valid reasons. My exemption request was denied by my employer as it did not meet their criteria. My conclusion from the messaging from the media regarding the healthcare mandated sector along with no valid exemption left me without accessing E.I. benefits.

⁴ Action Item dated September 9, 2022, at GD 3-14.

⁵ Supplementary Record of Claim dated September 27, 2022, at GD 3-15.

⁶ Request for Reconsideration filed October 12, 2022, at GD 3-17 and GD 3-19.

⁷ Supplementary Record of Claim dated November 9, 2022, at GD 3-22.

⁸ At approximately 14:59 to 15:30 of the audio recording of the General Division hearing.

CBC – Oct 21/21 – Feds say workers refusing to get vaccinated can't count on E.I.

National Post – Dec 31/21 - Jobless Canadians who refused to get vaccinated for Covid-19 could be shut out of employment benefits warns Employment Minister Carla Qualtrough

The Canadian Press - April 21/22

Ottawa - internal Government documents show liberals pledge to prevent unvaccinated people from accessing jobless benefits.

I did not question the fact that Human Resources department at work and Union representative at work claimed that I was not eligible for E.I. benefits.⁹

[19] The General Division acknowledged the Claimant's evidence about what she saw in the media. The General Division accepted that the Claimant relied on statements from her employer and union, as well as media reports, to determine her eligibility for benefits. But, relying on information from the media was a different thing from contacting the Commission.

[20] It is clear that the General Division determined that relying on information in the media did not represent good cause for the Claimant's delay. It found that she should have contacted the Commission directly.

[21] The General Division found that the Claimant had not tried contacting the Commission at any time before August 23, 2022.¹⁰ This is consistent with the evidence that was before it. For this reason, I am not satisfied that the Claimant has an arguable case that the General Division overlooked the fact that she received misinformation from the Commission before she applied for benefits.

⁹ Claimant's Notice of Appeal - Employment Insurance - General Division, at GD 2-7.

¹⁰ General Division decision, at para 32.

Conclusion

[22] An extension of time is granted. Permission to appeal is refused. This means that the appeal will not proceed.

Janet Lew
Member, Appeal Division