



Citation: *BD v Canada Employment Insurance Commission*, 2023 SST 1362

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: B. D.
Representative: Pamela Sero-Thompson

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 18, 2023
(GE-22-3578)

Tribunal member: Janet Lew

Decision date: October 6, 2023

File number: AD-23-746

Decision

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

Overview

[2] The Applicant, B. D. (Claimant), is asking for an extension of time to file his application for leave (permission) to appeal the General Division decision.

[3] The General Division found that the Claimant lost his job because of misconduct. In other words, it found that he had done something that caused him to lose his job. He had not complied with his employer's vaccination requirements. As a result of the misconduct, he was disqualified from receiving Employment Insurance benefits.

[4] The Claimant denies that he committed any misconduct. He argues that the General Division made an error in finding that he committed misconduct. He says that he did not comply with his employer's vaccination requirements because of his religious and other beliefs. He suggests that misconduct does not arise when there are valid reasons not to comply with an employer's policies.

[5] Before the Claimant can move ahead with his appeal, the first thing I have to decide is whether the Claimant filed his application to the Appeal Division on time. If the Claimant was late with his application, then he has to get an extension of time. He has to have a reasonable explanation for being late, otherwise the Appeal Division is unable to grant an extension of time.¹ If he does not get an extension of time, this ends the appeals process at the Appeal Division.

¹ *Social Security Tribunal Rules of Procedure*, section 27 says an appellant who files an application for permission to appeal after the deadline must explain why they are late. The Tribunal gives more time to appeal if the appellant has a reasonable explanation for why they are late.

[6] If the Claimant gets an extension, I still have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.² If the appeal does not have a reasonable chance of success, this ends the matter.³

[7] I find that the Claimant did not provide any explanation for his delay. But, even if I had granted an extension, I would have found that the appeal does not have a reasonable chance of success and would not have granted his application for leave to appeal.

Issues

[8] The issues are:

- i. Was the Claimant late when he filed his application to the Appeal Division?
- ii. If so, should I grant an extension of time?
- iii. If I grant an extension of time, does the Claimant have an arguable case?

Analysis

The application was late

[9] The Claimant does not say when he received the General Division decision. The decision is dated May 18, 2023, and the Social Security Tribunal (Tribunal) sent a copy of the decision to the Claimant by regular mail on May 18, 2023.

[10] The Tribunal considers that the Claimant received a copy of the General Division decision 10 days after sending it to him by regular mail.⁴

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

³ Under section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if am satisfied, "that the appeal has no reasonable chance of success."

⁴ See *Social Security Tribunal Rules of Procedure*, section 22(1).

[11] There is no doubt that the Claimant received the General Division decision. He contacted the Tribunal on June 5, 2023. He asked the Tribunal how he could appeal the General Division decision.

[12] The Claimant had to file an application to the Appeal Division within 30 days after the day on which he received the decision in writing.⁵ So, he should have filed his application by no later than June 28, 2023 (or by July 5, 2023, if he received the decision on June 5, 2023).

[13] The Claimant filed an application to the Appeal Division on August 3, 2023. He was late by about 30 days.

[14] Because the Claimant did not file his application on time, he 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

[15] The Appeal Division may grant an extension to file if an application is late by not more than one year.⁶ The Appeal Division gives more time to appeal if an appellant has a reasonable explanation for why they are late.⁷

[16] The Claimant did not offer any explanation for being late. He did not give any explanation on his application to the Appeal Division, and he did not respond to the Tribunal's request for an explanation.⁸

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

⁵ See section 57(1)(a) of the DESD Act.

⁶ See section 57(2) of the DESD Act.

⁷ See section 27 of the *Social Security Tribunal Rules of Procedure*.

⁸ See Tribunal's letter of August 25, 2023, requesting more information.

The Claimant does not have an arguable case

[18] 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 him permission to move ahead with his appeal.

[19] The Claimant denies that there was any misconduct because he had a valid reason not to comply with his employer's vaccination requirements. Unfortunately for the Claimant, that is not the test for misconduct.

[20] As the courts have long established, the test is whether an applicant knew about their employer's policy as well as the consequences for not following it, and then intentionally committed an act (or failed to commit an act), contrary to their employment obligations.

[21] In the cases of *Kuk*,⁹ *Cecchetto*,¹⁰ and *Milovac*,¹¹ each appellant had valid objections to their employer's respective vaccination requirements. Even so, the courts found that those were irrelevant considerations and that there was misconduct.

Conclusion

[22] I have not given the Claimant an extension of time to apply to the Appeal Division. This means that the application will not proceed.

Janet Lew
Member, Appeal Division

⁹ *Kuk v Canada (Attorney General)*, 2023 FC 1134.

¹⁰ *Cecchetto v Canada (Attorney General)*, 2023 FC 102.

¹¹ *Milovac v Canada (Attorney General)*, 2023 FC 1120.