



Citation: *MN v Canada Employment Insurance Commission*, 2023 SST 1385

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

### **Extension of Time and Leave to Appeal Decision**

**Applicant:** M. N.  
**Representative:** A. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated August 20, 2023  
(GE-22-3928)

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**Tribunal member:** Janet Lew

**Decision date:** October 20, 2023

**File number:** AD-23-897

## Decision

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

## Overview

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

[3] The General Division found that the Claimant had shown good cause for the delay in applying for Employment Insurance benefits. In other words, she had given an explanation that the law accepts for why she was late. This meant that the Claimant's application could be treated as though she had made it on time.

[4] The Claimant won her appeal at the General Division. But, for whatever reason, the Claimant wants to appeal the decision. She argues that the General Division made jurisdictional, procedural, legal, and factual errors. Even so, none of her arguments are about any of the issues that the General Division looked at.

[5] Before the Claimant can move ahead with her appeal, I have to decide whether the Claimant filed her application to the Appeal Division on time. If the Claimant was late with her application, then she has to get an extension of time. She has to have a reasonable explanation for being late. If she does not have a reasonable explanation, the Appeal Division cannot grant an extension of time.<sup>1</sup> The Appeal Division would have no chance but to end the appeals process at the Appeal Division.

[6] If the Claimant gets an extension, the appeal still has to have a reasonable chance of success before the appeal can go forward. In other words, there has to be an

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<sup>1</sup> *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.

arguable case.<sup>2</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>3</sup>

[7] The Claimant has a reasonable explanation for the delay in filing her application to the Appeal Division. But I find that the appeal does not have a reasonable chance of success. For that reason, I am not giving the Claimant permission to move ahead with her appeal.

## Issues

[8] The issues are:

- i. Did the Claimant file her application to the Appeal Division on time?
- 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 acknowledges that she filed an application after the 30-day deadline.

[10] The Claimant says that she received the General Division decision on August 21, 2023. There is a 30-day deadline by which an applicant has to file an Application to the Appeal Division.<sup>4</sup> So, she should have filed her application by September 20, 2023. She did not file an application until September 29, 2023. So, she was nine days late.

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<sup>2</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>3</sup> 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."

<sup>4</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.

[11] The Claimant says that she went to a Service Canada office for help to fill out her application. But there were long line-ups. And even though she waited for hours, she could not get in to see anyone for help. The office turned her away. She took pictures of the line-ups.<sup>5</sup>

[12] The Claimant's photos show that there was snow on the ground. People were dressed in winter clothes. The Claimant clearly did not take these photos in August or September 2023, when she says that she tried to get help from Service Canada.

[13] The Claimant also gave a link to a news article about long line-ups. The link no longer appears active. But the date of the link is for December 2021. So, it suggests that the news article was about line-ups in December 2021.

[14] I do not accept that the photographs or the link prove that there were long line-ups at the Service Canada office in August or September 2023.

[15] However, I will give the Claimant the benefit of the doubt and accept that she went to Service Canada for help. I will accept that she could not get help to fill out her application on time.

### **I am extending the time for filing the application**

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

[17] The Claimant's photos and link to news article are outdated and do not show that there were long line-ups at Service Canada in August or September 2023. Even so, I accept that the Claimant tried to get help from Service Canada, but was not able to get help on time. This reasonably explains why she was late in filing her application to the Appeal Division.

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<sup>5</sup> See pictures of line-ups outside Service Canada office, at AD 1-8 and AD 1-9.

<sup>6</sup> See section 57(2) of the DESD Act.

[18] As the Claimant has a reasonable explanation, I am extending the time for filing the application.

### **I am not giving the Claimant permission to appeal**

[19] I find that the Claimant does not have an arguable case. So, I am not giving her permission to move ahead with her appeal.

[20] The Claimant argues that the General Division made jurisdictional, procedural, legal, and factual errors

[21] The Claimant denies that she committed any misconduct under the *Employment Insurance Act* because she says she developed natural immunity to developing COVID-19, she was entitled to a religious exemption, COVID-19 ceased to be a global emergency, and her employer let unvaccinated employees return to work after May 31, 2023. She suggests that misconduct does not arise when there are valid reasons not to comply with an employer's policies.

[22] However, the Claimant's case at the General Division in this matter (appeal file number GE-22-3928) was about whether she had good cause for her delay in applying for Employment Insurance benefits. None of her arguments relate to the issues that the General Division had to consider (under appeal file number GE-22-3928). The Claimant has not raised any grounds of appeal.

[23] Apart from this, the Claimant won her appeal at the General Division. She proved that she had good cause for being late with her application. There is nothing more that the Claimant can gain or get if she were to go ahead with her appeal at the Appeal Division.

[24] The Claimant had a second appeal at the General Division, under appeal file number GE-22-3927. But that is a separate appeal. The issues there are different than those in this appeal. The Appeal Division will address the issues in that case separately from this case.

[25] I am not satisfied that the appeal in this matter has a reasonable chance of success.

## **Conclusion**

[26] An extension of time is granted.

[27] The appeal does not have a reasonable chance of success. Leave to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division