



Citation: *MN v Canada Employment Insurance Commission*, 2023 SST 1387

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

Decision under appeal: General Division decision dated August 20, 2023
(GE-22-3927)

Tribunal member: Janet Lew

Decision date: October 20, 2023

File number: AD-23-896

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

[3] The General Division found that the Respondent, the Canada Employment Insurance Commission, had proven that the Claimant lost her job because of misconduct. In other words, she had done something that caused her to lose her job. She had not complied with her employer's mandatory COVID-19 vaccination policy.

[4] As a result of her misconduct, the Claimant was disqualified from receiving Employment Insurance benefits.

[5] The Claimant denies that she committed any misconduct 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. She argues that the General Division made jurisdictional, procedural, legal, and factual errors.

[6] 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.¹ If she does not get an extension of time, this ends the appeals process at the Appeal Division.

[7] If the Claimant gets an extension, the appeal must have a reasonable chance of success before the appeal can go ahead. 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

[8] 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

[9] 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

[10] The Claimant acknowledges that she filed an application after the 30-day deadline.

[11] 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

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.

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.”

Application to the Appeal Division.⁴ So, she should have filed her application by September 20, 2023. She did not file an application until September 29, 2023. She was nine days late.

[12] 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.⁵

[13] 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.

[14] 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.

[15] 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.

[16] 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

[17] 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.

⁴ 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.

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

⁶ See section 57(2) of the DESD Act.

[18] 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.

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

The Claimant does not have an arguable case

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

[21] The Claimant denies that she committed any misconduct 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. She argues that the General Division made jurisdictional, procedural, legal, and factual errors.

– The Claimant says she was entitled to a religious accommodation

[22] The Claimant says the General Division should have recognized that she did not commit any misconduct. She says that she was entitled to a religious accommodation. She says that she could have worked while wearing protective equipment, by undergoing regular testing and screening, and abiding by other health and safety protocols.

[23] But, as the Federal Court of Appeal stated in a case called *Mishibinijima*,⁷ an employer's lack of accommodations is not relevant to the misconduct issue.

⁷ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

[24] The General Division did not make a legal error when it determined that it could not consider whether the Claimant should have received a religious accommodation.. For this reason, I am not satisfied that there is an arguable case that the General Division made a legal error over the accommodation issue.

– **The Claimant says her employer’s vaccination policy was unreasonable**

[25] The Claimant suggests that the General Division should have decided whether her employer’s vaccination policy was reasonable. She argues that her employer’s vaccination policy was unreasonable. And, for that reason, says that she should not have had to comply with it.

[26] The Claimant says she developed natural immunity, that COVID-19 ceased to be a global emergency, and that her employer let unvaccinated employees return to work. She suggests that her employer’s vaccination policy should not have applied to those who developed natural immunity. She also says COVID-19 stopped being a global emergency and unvaccinated employees were able to return to the workplace.

[27] In the cases of *Kuk*⁸ and *Cecchetto*,⁹ the Federal Court has said that the General Division and Appeal Division do not have the power to assess an employer’s policies. The authority and power of both the General Division and the Appeal Division are limited. The Court has said that their role, when considering misconduct under the *Employment Insurance Act*, is to focus on whether a claimant intentionally committed an act (or failed to commit an act), contrary to their employment obligations. The General Division did just that.

[28] I am not satisfied that the General Division failed to decide whether the employer’s vaccination policy was reasonable.

⁸ *Kuk v Canada (Attorney General)*, 2023 FC 1134.

⁹ *Cecchetto v Canada (Attorney General)*, 2023 FC 120.

Conclusion

[29] An extension of time is granted. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division