



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *NS v Canada Employment Insurance Commission*, 2022 SST 1142  
Tribunal File Number: GE-22-725

BETWEEN:

**N. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: John Noonan

DATE OF DECISION: April 13, 2022

## REASONS AND DECISION

### OVERVIEW

[1] The Appellant applied for employment insurance benefits. Further to a request for reconsideration, on October 28, 2021, the Respondent issued a decision under section 112 of the *Employment Insurance Act* (Act). The Appellant received the decision dated November 18, 2021 as he appealed it on March 10, 2022.

[2] In accordance with paragraph 52(1)(a) of the *Department of Employment and Social Development Act* (DESD Act), the Appellant had until December 18, 2021 to file an appeal. The Appellant filed an appeal on March 10, 2022 outside the 30-day limit.

[3] The Tribunal must decide whether to allow an extension of time for the Appellant to appeal pursuant to subsection 52(2) of the DESD Act.

### ANALYSIS

[4] In deciding whether to allow further time to appeal, the Tribunal considered and weighed the four factors set out in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883. The weight to be given to each of the *Gattellaro* factors may differ in each case, and in some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served (*Canada (Attorney General) v. Larkman*, 2012 FCA 204; see also *Jama v. Canada (Attorney General)*, 2016 FC 1290, which confirmed this approach in considering whether an extension of time should be granted).

### Continuing Intention to Pursue the Appeal

[5] Additional information regarding the delay was requested from the Appellant on March 22, 2022 with a response deadline of 10 days from that date. There is no indication that the e-mail was not delivered.

[6] No response was received from the Appellant.

[7] The Tribunal finds that the Appellant did not have a continuing intention to pursue the appeal.

### **Arguable Case**

[8] The Federal Court of Appeal has found that the question of whether there is an arguable case at law is akin to determining whether there is a reasonable chance of success (*Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41); *Fancy v. Canada (Minister of Social Development)*, 2010 FCA 63).

[9] The issue{s} here is whether the Appellant has proven availability while attending a full time course of instruction.

[10] The Appellant argues that he was available however this has not been proven.

[11] Given the foregoing, it is not plain and obvious that the appeal is bound to fail and therefore there is an arguable case

### **Reasonable Explanation for the Delay**

[12] Again, additional information regarding the delay was requested from the Appellant on March 22, 2022 with a response deadline of 10 days from that date. There is no indication that the e-mail was not delivered.

[13] No response was received from the Appellant.

[14] The Tribunal finds that the Appellant did not provide a reasonable explanation for the delay in filing the appeal.

### **Prejudice to the Other Party**

[15] The Respondent's interests do not appear to be prejudiced given the short period of time that has lapsed since the reconsideration decision. The Respondent has already provided their documents and submissions in relation to the appeal and therefore would not be unduly affected by an extension of time to appeal.

**CONCLUSION**

[16] In consideration of the Gattellaro factors and in the interests of justice, the Tribunal finds that an extension of time to appeal pursuant to subsection 52(2) of the DESD Act is refused.

John Noonan  
Member, General Division – Employment Insurance