



Citation: *MS v Canada Employment Insurance Commission*, 2023 SST 1744

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: M. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 26, 2022
(GE-22-1460)

Tribunal member: Pierre Lafontaine

Decision date: December 4, 2023

File number: AD-23-987

Decision

[1] I refuse to grant the Claimant an extension of time to appeal to the Appeal Division.

Overview

[2] The Appellant (Claimant) was denied regular Employment Insurance benefits because the Respondent (Commission) determined that she had lost her employment because of misconduct for not complying with the employer's vaccination policy.

[3] The Claimant appealed that decision to the General Division.

[4] On August 26, 2022, the General Division summarily dismissed the Claimant's appeal. It determined that the Claimant was aware of the policy and that she knew she could be suspended for not following it. The General Division determined that this was the reason why the Claimant was suspended from her job. It concluded that the Claimant lost her job because of misconduct.

[5] The Claimant now wants to appeal the General Division's decision to the Appeal Division. She submits that there are many cases that have found to be unconstitutional for a person to be put on leave or terminated from employment for not taking the COVID-19 vaccination. She submits that she was not fired by her employer and that there was no misconduct on her part.

[6] I must decide whether I can grant the Claimant an extension of time to appeal to the Appeal Division.

Issue

[7] Can the Claimant be allowed an extension of time to file her appeal of a summarily dismissal decision following the December 5, 2022, amendments to the *Department of Employment and Social Development Act* (DESD Act)?

Analysis

Can the Claimant be allowed an extension of time to file her appeal of a summarily dismissal decision following the December 5, 2022, amendments to the DESD Act?

[8] The General Division summarily dismissed the Claimant's appeal on August 26, 2022. The Claimant filed her appeal on October 25, 2023.

[9] The DESD Act was amended on December 5, 2022. It abolished the possibility for the General Division to summarily dismiss a claimant's appeal.¹ It thus eliminated the possibility of appealing such a decision to the Appeal Division.²

[10] However, as a transitional measures, the DESD Act allowed the possibility for a claimant to appeal a summarily dismissal decision made by the General Division at the Appeal Division within 90 days after the day on which this amendment came into force, December 5, 2022.³

[11] Unfortunately, for the Claimant, she did not file her appeal within 90 days on which the amendment came into force. She filed her appeal on October 25, 2023. She is more than 7 months late. The law gives me no discretion to allow the Claimant further time to appeal. I have no choice but to refuse to grant the Claimant an extension of time to appeal.

Conclusion

[12] I refuse to grant the Claimant an extension of time to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

¹ Former section 53 of the *Department of Employment and Social Development Act*.

² Former section 56(2) of the *Department of Employment and Social Development Act*.

³ See related provisions, section 240 (1): time limits for appeals – summary dismissal.