



Citation: *KS v Canada Employment Insurance Commission*, 2023 SST 1767

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: K. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 7, 2023
(GE-23-418)

Tribunal member: Stephen Bergen

Decision date: **December 8, 2023**

File number: AD-23-968

Decision

[1] I am granting an extension of time to apply to the Appeal Division. However, I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] K. S. is the Applicant. He made a claim for the Employment Insurance Emergency Response Benefit (ERB), so I will call him the Claimant. Under the ERB program, claimants were entitled to a \$500.00 weekly benefit if they met the requirements. To get benefits to claimant's quickly, the Respondent, the Canada Employment Insurance Commission (Commission), also immediately prepaid or advanced \$2000.00 to claimants. It expected to recover the \$2000.00 advance by withholding the weekly benefit for certain weeks later in the claim.

[3] The Claimant received this \$2000.00 advance. However, he returned to work and stopped claiming the ERB benefit before the Commission had a chance to recover the entire advance. The Commission sent the Claimant a Notice of Debt to recover the advance from the Claimant.

[4] The Claimant received two other Notices of Debt because of other overpayments. According to the Commission's records, the Claimant was also mistakenly paid twice for the two weeks from July 12 to July 25, 2020. This meant that he was overpaid by \$1000.00. The Claimant was also paid five weeks of benefits to which he was not entitled. These were weeks in which he was working and had earnings. This resulted in a separate overpayment of \$2500.00.

[5] When the Claimant filed his request for reconsideration, he disagreed with an overpayment in the amount of \$2000.00. This is the overpayment that arose from the July 9, 2022, Notice of Debt. The Claimant discussed his reconsideration request with the Commission. The repayment of this \$2000.00 advance appears to have been the

only issue in dispute.¹ The Commission upheld the July 9, 2022, decision related to the “payment in advance.”

[6] The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal), which considered only the ERB advance. The General Division found that the Commission could not recover the entire advance. This was because it had already recovered two weeks of the advance when it withheld benefits from June 7 to June 20, 2020. It decided that the Claimant now owed only \$1000.00 of the advance.

[7] The Claimant applied for leave to the Appeal Division when he discovered that he was still required to repay \$4500.00. His application was late.

[8] I am granting the Claimant an extension of time to apply to the Appeal Division because he has a reasonable explanation for his late appeal. Therefore, I have reviewed his application for leave.

[9] I am refusing to grant leave to appeal because he has no reasonable chance of success in his appeal. He has not made out an arguable case that the General Division process was unfair, or that it made any other error that I can consider.

Issues

[10] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) If it was late, should I extend the time for filing the application?
- c) Is there an arguable case that the General Division acted unfairly by not sending its decision to the Claimant in a timely manner?

¹ See GD3-39.

Analysis

The application was late

[11] In his Notice of Appeal to the General Division, the Claimant authorized the Tribunal to communicate with him by email. The General Division issued its decision on June 7, 2023, and emailed it to the Claimant the next day.

[12] If the Tribunal sends a document to a party by email, its Rules state that it considers the recipient to have received the document on the next business day.² The Rules also allow that a party can show that this rule should not apply to them.³

[13] The Claimant acknowledged that he had already received the decision when he called the Tribunal on June 13, 2023. Other than that, there is no evidence as to the date that the Claimant actually received the decision. I find that he received the decision on June 9, 2023, which is the next business day from the date the decision was emailed. The Claimant has not shown that he received it on any later date.

[14] Since the document delivery rule applies, the Claimant's deadline was July 9, 2023, 30 days from June 9, 2023.

[15] The deadline to appeal a decision of the General Division to the Appeal Division is 30 days from the date that it is communicated in writing.⁴ In this case, the deadline was July 9, 2023.

[16] The Claimant's application was received by the Tribunal on October 19, 2023. It was more than three months late.

² See section 22(3) of the *Social Security Tribunal Rules of Procedure* (Rules).

³ See section 22(4) of the Rules.

⁴ See section 57(1)(a) of the *Department of Employment and Social Development Act* (DESDA).

I am extending the time for filing the application

[17] When deciding whether to grant an extension of time, I must consider whether the Claimant has a reasonable explanation for being late.⁵

[18] The Claimant did not explain why he was late in his application form. He only said that he thinks that time should be counted from his last conversation with the Tribunal in August 2023, when the Tribunal sent him the application form. According to the Tribunal's records, the Claimant discussed continuing the appeal process with the Tribunal on August 30, 2023. It confirmed that it was sending him the leave to appeal application.

[19] The Claimant had also called the Tribunal on June 13, 2023 to ask about his next steps. Based on his understanding of the impact of the decision, he thought that he agreed with the decision result. As a result, he was told to wait to see if any other party appealed. He was not told to appeal or of his own deadline if he chose to appeal. He called the Tribunal again in July and three times in August. He expressed concern because he was being asked to repay more than what he owed according to his understanding of the General Division decision. In October 2023, he called to tell the Tribunal that he had sent the Tribunal his application in September.

[20] I find that the Claimant's misunderstanding of the meaning of the General Division decision, coupled with his repeated calls to the Tribunal, gives him a reasonable explanation for the lateness of his application. I am granting the extension of time to apply for leave.

I am not giving the Claimant permission to appeal

General Principles

[21] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

⁵ See a 27(2) of the *Social Security Tribunal Rules of Procedure*.

[22] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.⁶

[23] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an “arguable case.”⁷

Procedural Fairness

[24] The only ground of appeal that the Claimant selected in completing his application to the Appeal Division was the ground of appeal concerned with procedural fairness.

[25] However, he has not made out an arguable case that the General Division acted unfairly.

[26] It appears that the Claimant is most concerned that the decision **result** was unfair. If I understand him correctly, he thought that the General Division had reduced his indebtedness to \$1000.00. He was surprised to find that he must still repay \$4500.00.

[27] In fact, the only issue before the General Division was whether he should have to repay the \$2000.00 ERB advance. It found that he only owed \$1000.00 of that \$2000.00 advance. It had no jurisdiction to consider the additional \$1000.00 debt that arose from

⁶ This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

⁷ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

a double payment in error, or the \$2500.00 debt from his claim for benefits for weeks during which he worked and earned income.

[28] In any event, procedural fairness is not concerned with whether a party feels that the decision result is fair. Procedural fairness is concerned with the fairness of the **process**.

[29] Parties before the General Division have a right to certain procedural protections. These include a party's right to be heard and to know the case against them, and the right to an unbiased decision-maker.

[30] The Claimant has not argued that the General Division did not give him a fair chance to prepare for the hearing or that he did not know what was going on in the hearing. He has not suggested that he did not have a fair chance to present his case at the hearing or to respond to the Commission's case. He has not complained that the General Division member was biased or had prejudged the matter before hearing from him.

[31] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that resulted in an unfair process.

[32] The Claimant has no reasonable chance of success.

Conclusion

[33] I granted the extension of time, but I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division