



[TRANSLATION]

Citation: *LM v Canada Employment Insurance Commission*, 2024 SST 176

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: L. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
October 27, 2023 (GE-23-2563)

Tribunal member: Pierre Lafontaine

Decision date: February 23, 2024

File number: AD-23-1112

Decision

[1] The application for permission to appeal was not late. However, permission to appeal is not granted. The appeal will not proceed.

Overview

[2] On April 23, 2021, the Respondent (Commission) issued a decision saying that it was unable to pay the Applicant (Claimant) benefits from the start of her benefit period.

[3] On July 26, 2023, the Claimant filled out a request for reconsideration form. The Commission decided that the Claimant had not demonstrated a continuing intention to challenge the initial decision. It decided not to extend the 30-day period to ask for a reconsideration of the April 23, 2021, decision. The Claimant appealed to the General Division.

[4] The General Division found that the Commission had exercised its discretion judicially when it refused to extend the 30-day period to ask for a reconsideration of the initial decision. This meant that it could not intervene.

[5] The Claimant now seeks permission from the Appeal Division to appeal the General Division's decision. She argues that the General Division did not take into account the fact that she was not inactive. She made calls and looked for places to go. She says that she stopped working to care for her son because he was sick and was not allowed in daycare. She argues that she was entitled to benefits during that difficult time.

Issue

[6] The law specifies the only grounds of appeal of a General Division decision.¹ These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.

¹ See section 58(1) of the *Department of Employment and Social Development Act*.

2. The General Division did not decide an issue it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[7] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she has to show that there is arguably a reviewable error based on which the appeal might succeed.

[8] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

I am not giving the Claimant permission to appeal

[9] The Claimant argues that the General Division did not take into account the fact that she was not inactive. She made calls and looked for places to go to challenge the initial decision.

[10] The Claimant says that she stopped working to care for her son because he was sick and was not allowed in daycare. She argues that she was entitled to benefits during that difficult time.

[11] The General Division had to decide whether it was appropriate for the Tribunal to intervene in response to the Commission's refusal to extend the 30-day period to ask for a reconsideration.

[12] The evidence shows that on April 23, 2021, the Commission issued a decision saying that it was unable to pay the Claimant benefits from the start of her benefit period. The Claimant did not file a request for reconsideration until July 26, 2023.

[13] The Commission found that the Claimant did not have a reasonable explanation for the delay of more than two years and that she had not demonstrated a continuing intention to ask for a reconsideration.

[14] Before the General Division, the Claimant's explanation for being late was that she simply did not know how to appeal the decision. She said that she had tried to find out, but people were not really helpful or told her that she had to wait. She said that she did not understand what she needed to do until she was told about the form in May 2023.

[15] The General Division found that the Commission had considered these factors but decided that they could not reasonably explain a delay of more than two years.

[16] Before the General Division, the Claimant acknowledged that she had received the Commission's initial decision, which clearly mentions the importance of the 30-day period and how to access a reconsideration form—online, by phone, or by visiting a Service Canada Centre.

[17] The initial decision says:

[translation]

Our decisions are based on the *Employment Insurance Act* and its *Regulations*. If you have already provided all pertinent information and still disagree with this (these) decision(s), **you have 30 days following the date of this letter (or from the date you were verbally notified, whichever occurred first)** to make a formal request for reconsideration to the Commission. For more information on how to request a reconsideration and to access the *Request for Reconsideration of an Employment Insurance decision* form, please visit www.canada.ca/en/services/benefits/ei/ei-reconsideration.html, contact us at 1-800-808-6352 or visit the nearest Service Canada Centre.²

[18] The General Division decided that the Commission had properly exercised its discretion when it found that the Claimant did not have a reasonable explanation for the

² See GD3-11.

more than two-year delay in asking for a reconsideration and that she had not demonstrated a continuing intention to ask for a reconsideration. This meant that it had no power to change the initial decision.

[19] I see no reviewable error made by the General Division. It properly applied the facts to the law in deciding that the Commission had acted judicially when it refused to give more time to ask for a reconsideration.

Conclusion

[20] The application for permission to appeal was not late. However, permission to appeal is not granted. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division