



Citation: *MM v Canada Employment Insurance Commission*, 2024 SST 212

## **Social Security Tribunal of Canada Appeal Division**

### **Extension of Time Decision**

**Applicant:** M. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated May 12, 2023  
(GE-22-3512)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** March 5, 2024

**File number:** AD-24-113

## Decision

[1] An extension of time to file an application for leave (permission) to appeal is refused.

## Overview

[2] The Applicant (Claimant) lost her job. She then applied for Employment Insurance (EI) regular benefits.

[3] The Respondent (Commission) determined that the Claimant lost her job because of misconduct, so it was not able to pay her benefits. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[4] The General Division found that the Claimant lost her job following her refusal to follow the employer's vaccination Policy. It found that the Claimant knew or ought to have known that the employer was likely to suspend and dismiss her in these circumstances. The General Division found that the settlement between the parties did not change any of its findings of fact. The General Division concluded that the Claimant was suspended and dismissed from her job because of misconduct.

[5] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division. The Claimant puts forward that the General Division decision rendered in May 2023 was made while legal action against her employer was in progress. She submits that there was still a legal debate between her employer and herself regarding the reason of the employment cessation, and therefore, the denial decision made in May 2023 was premature, and it was based on incomplete evidence.

[6] I must decide whether I will allow the late application and if I do, I must decide whether the appeal has a reasonable chance of success.

[7] I refuse to grant the Claimant an extension of time to file an application for permission to appeal.

## Issues

[8] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) Should I extend the time for filing the application?

## Analysis

### **The application is late**

[9] The General Division decision was communicated to the Claimant on May 12, 2023. The application for leave to appeal was made on February 6, 2024. The Claimant's application is late.

### **I am not extending the time for filing the application**

[10] When deciding whether to grant an extension of time, I must consider whether the Claimant has a reasonable explanation for why the application is late.

[11] The Claimant puts forward that the new evidence became available after the General Division decision and that she was not aware she would need to appeal the General Division decision. The Claimant puts forward that Service Canada led her to believe the new amended *Record of Employment* (ROE) would allow her to receive EI benefits.

[12] The Claimant submits that the General Division decision rendered in May 2023 was made while legal action against her employer was in progress. She submits that there was still a legal debate between her employer and herself regarding the reason of the employment cessation, and therefore, the denial decision made in May 2023 was premature, and it was based on incomplete evidence. She submits that the updated ROE shows that she was not dismissed by her employer for misconduct.

[13] The General Division decided that the Claimant was suspended then lost her job because of misconduct. In its decision, the General Division wrote that because of this, the Claimant is disentitled and disqualified from receiving EI benefits.

[14] The General Division decision letter dated May 12, 2023, clearly mentions that **if the Claimant disagrees** with the General Division decision, she must submit her application form to the Appeal Division 30 days from the day she received the decision letter. The Claimant did not do so.

[15] I note that the updated ROE issued on June 14, 2023, mentions that the parties agree to a “mutual cessation of employment”. It was issued 33 days after the General Division decision. The Claimant only filed her application for leave to appeal to the Appeal Division on February 6, 2024. Waiting more than six months for the Commission to tell her to appeal to the Appeal Division, as indicated in the General Division decision letter, is not a reasonable explanation for why her application is late.

[16] Furthermore, if the Claimant felt that her evidence was incomplete prior to her hearing before the General Division, she should have requested that the hearing be adjourned until the end of the litigation with her employer. She did not make such a request and proceeded with the in-person hearing on April 5, 2023.

[17] It is well established that the General Division does not have an obligation to act as legal counsel for a claimant.<sup>1</sup> It was up to the Claimant to take the appropriate steps before the General Division, and after its decision denying benefits, to protect her rights.

[18] The delay herein is more than eight months. I do not find that the Claimant has given me a reasonable explanation for why her application to the Appeal Division is late.

[19] Even if I were to grant the extension of time to file her application, I find that the appeal has no reasonable chance of success.

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<sup>1</sup> *AP v Canada Employment Insurance Commission*, 2017 CanLII 91677 (SST), affirmed by the Federal Court of Canada, T-2111-17.

[20] The General Division is never bound by how an employer characterizes the reasons for the lost of employment. It was up to the General Division to verify and interpret the facts of the present case and make its own assessment on the issue of misconduct.

[21] I note that it was part of the Minutes of Settlement for the employer to re-issue an ROE that does not indicate termination for cause.<sup>2</sup> The General Division already considered the settlement, and it did not change its decision. It found that the settlement between the parties did not change any of its findings of fact.

[22] The General Division determined that the parties agreed in the Minutes of Settlement that the employer's vaccination Policy was and continued to be reasonable up until March 1, 2023. It determined that the Claimant had been suspended and dismissed for refusing to follow the Policy before March 1, 2023. The General Division concluded that the Claimant lost her job because of misconduct.

[23] I see no reviewable error made by the General Division that would allow the disputed decision to be overturned.

## **Conclusion**

[24] I have not given the Claimant an extension of time to apply to the Appeal Division. This means that the application will not proceed.

Pierre Lafontaine  
Member, Appeal Division

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<sup>2</sup> See GD17-5, paragraph 9 of the Minutes of Settlement.