

**Social Security Tribunal of Canada
Appeal Division**

Extension of Time and Leave to Appeal Decision

Applicant: A. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 28, 2023
(GE-23-571)

Tribunal member: Stephen Bergen

Decision date: March 15, 2024

File number: AD-24-108

Decision

[1] I am granting the Claimant's request for an extension of time to apply to the Appeal Division. However, I am refusing leave (permission) to appeal.

Overview

[2] A. E. is the Applicant. I will call him the Claimant because this appeal concerns his claim for Employment Insurance (EI) benefits.

[3] The Claimant was outside of Canada from August 4 to October 2, 2019. He was receiving EI benefits at the time but failed to report to the Commission that he was outside of Canada. When the Commission learned that he had been outside of Canada, it imposed a retroactive disentitlement. It accepted that he qualified for benefits for the first seven days of his absence because he was visiting a sick parent, but it found that he was disentitled for the period from August 12 to October 2, 2019. This meant that the Claimant should not have received benefits for those weeks and was overpaid.

[4] The Commission would not change its decision when the Claimant asked it to reconsider, so the Claimant appealed to the General Division of the Social Security Tribunal (Tribunal). The General Division dismissed his appeal, so he is asking for leave to appeal to the Appeal Division. His application is late.

[5] I am extending the time in which the Claimant may apply to the Appeal Division, but I am not giving him permission to appeal. The Claimant has not made out an arguable case that the General Division made an error of procedural fairness or that it made an important error of fact.

Issues

[6] 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?

- c) Is there an arguable case that the General Division made an error of procedural fairness?
- d) Is there an arguable case that the General Division made an important error of fact by failing to consider his compassionate circumstances?

Analysis

The application was late

[7] However, in his Notice of Appeal to the General Division, the Claimant authorized the Tribunal to send documents to her by email. The General Division issued its decision on December 28, 2023, and emailed it to the Claimant on December 29, 2023.

[8] Where 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 after the day it was sent. The Rules also allow that a party can show that this rule should not apply to them.

[9] The Claimant said that he received the “letter” late because it went to his neighbour’s address. However, there is no evidence of when he received the copy of the decision that was emailed on December 29, 2023. So, he has not shown why this rule should not apply to him.

[10] Since the Tribunal emailed the decision to the Claimant on December 29, 2023, he would be deemed to receive it on January 2, 2024 - the next business day. This would mean that he would need to file his appeal by February 1, 2024, to be on time.

[11] The Tribunal did not receive his appeal until February 5, 2024, so the appeal is late.

¹ It says this in section 22(3) of the *Social Security Tribunal Rules of Procedure* (Rules).

² It says this in section 22(4) of the Rules.

I am extending the time for filing the application

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

[13] I accept that the Claimant had a reasonable explanation for appealing late.

[14] Even though the Claimant is deemed to have received the decision on January 2, the Claimant explained that he received the decision letter late, “over 10 days,” because it was delivered to his neighbor.

[15] Had the Claimant not indicated that the Tribunal could communicate with him by email, it would have treated the decision as “communicated” when he received the written copy. The Claimant says that this was after more than 10 days, because it went to his neighbor. But, even without this evidence, his appeal would not have been late. The Rules would deem him to have received the written decision 10 days after it was sent, which would be January 8, 2024, so he would have been on time if he filed before February 7, 2024

[16] For whatever reason, the Claimant was apparently waiting for the written decision in the mail. The Claimant is 67 years old and dealing with serious medical issues and, given that his appeal is only four days late in any event, I accept that he has provided a reasonable explanation for why his appeal is late.

I am not giving the Claimant permission to appeal

General Principles

[17] For the Claimant’s application for leave to appeal to succeed, his reasons for appealing must fit within the “grounds of appeal.” The grounds of appeal identify the kinds of errors that I can consider.

[18] I may consider only the following errors:

³ It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

- 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.

[19] 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.”

Procedural fairness

[20] One of the Claimant’s grounds of appeal was the one concerned with procedural fairness.

[21] However, he has not made out an arguable case that the General Division acted in a way that was procedurally unfair.

[22] Procedural fairness is concerned with the fairness of the process. It is not concerned with whether a party feels that the decision result is fair.

[23] Parties before the General Division have a right to certain procedural protections such as the right to be heard and to know the case against them, and the right to an unbiased decision- maker.

[24] The Claimant has not said that he did not have a fair chance to prepare for the hearing or that he did not know what was going on in the hearing. He has not said that the hearing did not give him a fair chance to present his case or to respond to the

⁴ 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).

⁵ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

Commission's case. He has not complained that the General Division member was biased or that he had already prejudged the matter.

[25] 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 causes me to question the fairness of the process.

Important error of fact

[26] The Claimant also asserted that the General Division made an important error of fact, but his application to the Appeal Division did not explain why he believed this to be the case.

[27] On February 12, 2024, the Tribunal wrote to the Claimant to ask that he explain more about his reasons for appealing. In his response, the Claimant said that his request was a "humanity case." He explained that he and his wife live on his old age pension and that he was being treated for cancer. The Claimant asked that his overpayment be reduced so that he could make monthly payments.

[28] There is no arguable case that the General Division made an important error of fact.

[29] A person is disentitled to benefits while they are outside of Canada.⁶ The law makes limited exceptions for claimants who are outside of Canada for certain purposes.⁷ In fact, the Claimant benefited from one of those exceptions. The Commission had accepted that he was not disentitled for seven days of the time that he was visiting an immediate family member who was seriously ill. By law, seven days is all the law permits for that reason.⁸

[30] At the General Division, the Claimant argued that he should fall within the exception for claimants seeking medical care.⁹ However, the General Division did not

⁶ See section 37 of the EI Act.

⁷ See section 55(1) of the EI Act.

⁸ See section 55(1)(b) of the EI Act.

⁹ See section 55(1)(a) of the EI Act.

accept that care sought by the Claimant was not available in his area of residence in Canada.

[31] I do not have the power to interfere with the General Division's findings unless it made the kind of error of fact that is described in the grounds of appeal.

[32] The law says that the General Division makes an important error of fact when it bases its decision on a finding that ignores or misunderstands relevant evidence, or on a finding that does not follow rationally from the evidence.¹⁰

[33] Evidence that would have been relevant to the General Division's decision is any evidence that he was not outside of Canada when the Commission said he was, or evidence to support his argument that he fell within one of the exceptions. This would include any evidence to suggest that the kind of care he required was not readily or immediately available to him in his area of residence.

[34] The Claimant has not pointed to any relevant evidence that the General Division ignored or misunderstood.

[35] I sympathize with the Claimant, but the Claimant's compassionate circumstances are not relevant to any finding on which the General Division relied. Disentitlement under the law does not depend on a claimant's personal or financial hardships. Those circumstances do not change the amount of the overpayment that must be repaid.

[36] This means that the General Division cannot have made an error of fact if it did not consider these circumstances.

[37] The Claimant's appeal has no reasonable chance of success.

¹⁰ I have tried to make this error more understandable. This ground of appeal is defined in section 58(1)(c) of the DESDA. The General Division will have made an error of fact where it, "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

Conclusion

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

[39] As the General Division noted, the Tribunal has no jurisdiction to write off the Claimant's debt. The Claimant may still approach the Commission to ask it to write off the debt if he has not already done so. I cannot say whether they will agree to do so. He may also contact the Canada Revenue Agency to see what can be done about a payment schedule.

Stephen Bergen
Member, Appeal Division