



Citation: *FY v Canada Employment Insurance Commission*, 2024 SST 285

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: F. Y.

Respondent: Canada Employment Insurance Commission
Representative: Julie Villeneuve

Decision under appeal: General Division decision dated November 2, 2023
(GE-23-2311)

Tribunal member: Janet Lew

Decision date: March 20, 2024

File number: AD-24-68

Decision

[1] An extension of time to apply to the Appeal Division is refused. The application will not proceed.

Overview

[2] The Applicant, F. Y. (Claimant), filed an Application with the Appeal Division. He is asking for leave (permission) to appeal the General Division decision.

[3] The General Division found that the Claimant had received earnings that had to be allocated. This resulted in an overpayment of Employment Insurance benefits. As it found that the Claimant had knowingly given false statements, the Respondent, the Canada Employment Insurance Commission (Commission), imposed a penalty, on top of the overpayment. The General Division found that the Commission had imposed the penalty in a judicial manner.

[4] The Claimant does not actually challenge the General Division's decision.¹ He has paid part of the overpayment and penalty. However, he is seeking a reduction of both the overpayment and penalty. He says that he is experiencing financial hardship. The Appeal Division is unable to offer any relief to the Claimant because it does not have any power to reduce debts.

– The Claimant's application was late

[5] As far as the Claimant's application to the Appeal Division, the Claimant was late.² Before the Appeal Division can even consider the Claimant's application, the Claimant must get an extension of time to file his application.³ However, the Claimant

¹ I held a case conference on March 20, 2024, to clarify whether the Claimant disputed the General Division decision. He confirmed that he was not challenging the decision. He confirmed that he was focused on reducing the amount of the overpayment and penalty.

² The Social Security Tribunal sent a copy of the General Division decision to the Claimant by email on November 2, 2023. Under section 22(3) of the *Social Security Tribunal Rules of Procedure*, when the Tribunal sends a document to a party by email, it is considered received on the next business day. So, in this case, the Claimant is considered to have received the decision on November 3, 2023. Under section 57(1) of the *Department of Employment and Social Development (DESD) Act*, he had 30 days to file an application with the Appeal Division. He should have filed an application by no later than December 4, 2023. He did not file an application until January 15, 2024.

³ See section 57(2) of the DESD Act lets the Appeal Division extend the time for filing a late application.

did not explain why his application was late. Without a reasonable explanation to account for the delay, the Appeal Division also has no option but to refuse an extension.⁴ This means this ends the appeal.

– **The appeal does not have a reasonable chance of success**

[6] However, even if the Claimant's application had been filed on time, I would not have given the Claimant to move ahead with his appeal. To get permission to move ahead, I have to be satisfied that there is an arguable case that the General Division made a jurisdictional, procedural, legal, or a certain type of factual error.⁵ Having an arguable case is the same thing as saying the appeal has a reasonable chance of success.⁶

[7] The Commission argues that the General Division did not make any errors. The Claimant does not dispute this. I also do not see that the General Division made any of these kinds of errors, so I am not satisfied that the appeal has a reasonable chance of success.

The Claimant's Options

[8] At a case conference held earlier today, the Claimant confirmed that he was concerned with the amount of the overpayment and penalty. He says that he is experiencing financial hardship. He says that after the pandemic started, he incurred (unrelated) debts of around \$35,000. He is looking for some relief. He has already repaid part of the debt. He has already contacted CRA and negotiated a repayment plan. He currently repays about \$200 monthly.

[9] The Commission confirmed that it would not review or reduce the amount of the overpayment or penalty. It was of the position that this was a matter for the Canada Revenue Agency to consider.

⁴ See section 27(2) of the *Social Security Tribunal Rules of Procedure*.

⁵ See section 58(1) of the DESD Act. Under section 58(2) of the DESD Act, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

⁶ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[10] The Claimant states that he is not working presently. If the current repayment plan is too burdensome for the Claimant at this time and he is looking to revisit or renegotiate the repayment plan, he can contact CRA at the number listed on the Notice of Debt, at 1-866-864-5823.

[11] Otherwise, he can **write** to CRA and ask for a reduction or even a write-off and show that he is experiencing financial hardship. The *Employment Insurance Regulations* indicates that the Commission has the discretion to write off overpayments in specific circumstances, but as a matter of practice, the Commission defers to the CRA to assess a claimant's situation and make a recommendation.

Conclusion

[12] I have not given the Claimant an extension of time to apply to the Appeal Division. This means that the application will not be going ahead.

Janet Lew
Member, Appeal Division