



Citation: *AK v Canada Employment Insurance Commission*, 2024 SST 294

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: A. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 30, 2023
(GE-23-1404)

Tribunal member: Janet Lew

Decision date: March 21, 2024

File number: AD-24-74

Decision

[1] An extension of time to apply to the Appeal Division is granted. Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, A. K. (Claimant), is asking for an extension of time to file her application with the Appeal Division. She is also asking for leave (permission) to appeal the General Division decision.

[3] The General Division found that the Claimant was late when she applied for Employment Insurance benefits. It also found that she did not have good cause—an explanation that the law accepts—to explain the delay for the entire period that she was late. This period ran from October 1, 2017, to November 3, 2022. Because the General Division found that she did not have good cause, it did not treat her application as if she had made it earlier. So, the General Division did not backdate her application to October 1, 2017.

[4] The Claimant also was late when she filed her application with the Appeal Division. Because the Claimant's application to the Appeal Division is late, I have to consider whether to grant an extension of time. I have to be satisfied that the Claimant's explanation for being late is reasonable. If she does not have a reasonable explanation, this ends the appeal. The Claimant says that she has a reasonable explanation for the delay.

[5] If I grant an extension of time, I still have to consider whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.¹ If the appeal does not have a reasonable chance of success, this also ends the matter.²

¹ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

[6] The Claimant has a reasonable explanation for being late. However, the appeal does not have a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

Issues

[7] The issues in this appeal are as follows:

- a) Was the application to the Appeal Division late?
- b) If the application was late, should I extend the time for filing the application?
- c) If I grant an extension of time, is there an arguable case that there was a breach of the principles of natural justice?

Analysis

The application was late

[8] The Claimant acknowledges that she was late when she filed her application. The Social Security Tribunal (Tribunal) emailed a copy of the General Division decision to the Claimant and her counsellor on December 1, 2023. (The Claimant relies on a counsellor from the Canadian Hearing Services for communications and literacy support. The Claimant is deaf, and English is not her first language. Documents are translated from written English into American Sign Language for the Claimant.)

[9] The Claimant is considered to have received a copy of the General Division decision the next business day, on December 4, 2023.³

[10] After getting the General Division decision, the Claimant then had 30 days to file an application for leave to appeal with the Appeal Division.⁴ She should have filed an

³ See section 22(1)(3) of the *Social Security Tribunal Rules of Procedure*. The section says that when a party receives a document electronically, the document is considered received on the next business day.

⁴ See section 59(1)(a) of the DESD Act. The section says that an application for leave must be made to the Appeal Division 30 days after the day on which the decision made by the Employment Insurance Section is communicated to the appellant.

application by no later than January 3, 2024. But she did not file an application until January 17, 2024. She was late by 14 days.

[11] Because the Claimant did not file an application on time, she has to get an extension of time.

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.⁵

[13] The Claimant says that she was late because her counsellor was unavailable to help her before the filing deadline. The Claimant's counsellor contacted the Tribunal on January 3, 2024, and asked for an extension. They then met to discuss her appeal. The Claimant says that her counsellor immediately filed the application after they met to discuss the appeal.

[14] I am satisfied that the Claimant has a reasonable explanation for the delay. Her counsellor was unavailable. After she met with her counsellor, they filed an application soon after that. I am granting an extension of time.

[15] Next, I have to consider whether to give the Claimant permission to appeal.

I am not giving the Claimant permission to appeal

[16] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.⁶ For these types of factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

⁵ It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

⁶ See section 58(1) of the DESD Act.

The Claimant does not have an arguable case that the General Division breached the principles of natural justice

[17] The Claimant argues that there was a breach of the principles of natural justice. She says that she did not receive copies of all the records between October 1, 2017, and November 2, 2022. In particular, she says that the Canadian Video Relay Service did not fully disclose records of her telephone calls with Service Canada.

[18] The Claimant also says that the Respondent, the Canada Employment Insurance Commission (Commission) (through Service Canada) did not disclose all its records between October 1, 2017, and November 2, 2022.

[19] The Claimant says that the records would show that she tried to call Service Canada more than the file currently shows. She says it would suggest that the fact that she contacted Service Canada shows that she was unaware of the Employment Insurance application process.

[20] The General Division tried to help with the production of records in this case by asking the Commission to produce its records that the Claimant said were relevant and had not already been produced.⁷

[21] I also asked the Commission to confirm whether there were any additional records that it had not already produced for this timeframe.

[22] The Commission confirms that it has already produced all the records it has for the timeframe from October 1, 2017, up to and including November 2, 2022. It also confirms that it does not have any records documenting phone calls for the other dates.⁸ As far as the Commission is concerned, it has fully disclosed the entirety of its claims file.

⁷ See Social Security Tribunal letter dated September 18, 2023, at GD 11-1 and at 12-2. The Tribunal also sent a letter to the Commission on May 18, 2023. It asked the Commission to produce a copy of the required documents under section 51 of the *Social Security Tribunal Rules of Procedure*. Under that section, the Commission has to file a copy of all relevant documents, along with the reconsideration request, the reconsideration decision, and a document that sets out the Commission's arguments, if any.

⁸ See Commission's response filed in response to request from Tribunal, at AD4. The Commission says it does not have any records of any phone calls for November 3, 9, and 30, 2021.

[23] If there was a lack of disclosure of records by the Canadian Video Relay Service, the General Division is not responsible for that. The General Division does not have the power to compel or make any parties produce documents that it might have in its possession or control. So, there was no issue that the General Division failed to order the Canadian Video Relay Service to produce its records.

[24] The Claimant has not pointed to any potential errors under the *Department of Employment and Social Development Act* that the General Division might have made. A claimant does not have a basis for an appeal if the General Division arguably did not make a jurisdictional, procedural, legal, or certain types of factual errors, or if any errors were made by other parties or third parties unrelated to the appeal.

[25] I am not satisfied that the Claimant has an arguable case that the General Division made a procedural error or that it failed to observe a principle of natural justice.

The Claimant does not have an arguable case that the General Division made any factual errors

– The General Division found that the Claimant had good cause for the delay between 2017 and December 13, 2021

[26] I have also reviewed the file to make sure the General Division did not overlook or misconstrue any of the evidence.

[27] I note that the Claimant did not have to show that she contacted the Commission between 2017 to December 13, 2021, to show that she had good cause for her delay. The General Division accepted that the Claimant had good cause for the delay from 2017 to December 13, 2021.

– The General Division found that the Claimant did not have good cause after December 13, 2021

[28] The General Division found that the Claimant did not have good cause after December 13, 2021. It found that, by mid-2021, she knew about the Employment Insurance claim process. After all, she had made a different claim in July 2021. The

General Division also found that the Claimant had access to communication methods with the Commission by mid-2021.⁹

[29] The Claimant's counsellor summarized the history of the Claimant's appeal. She wrote:

July 2021 — [the Claimant] went on sick leave and learned to apply online with a different Canadian hearing Services counsellor. Received a code and thought about her medical leave in 2017 and how a code was received now but not in 2017.

Did not address it until things were settled being on medical leave.

October 19, 2022 — Online service request with Canadian Hearing Society counsellor

First call — need to review dates on the record again.¹⁰

[30] The evidence supports the General Division's findings that the Claimant did not take any steps for several months and therefore did not have good cause after December 13, 2021.

[31] The Claimant denies that she knew about the Employment Insurance process or that she was unable to communicate with the Commission without the help of her counsellor. But, as the counsellor explained, the Claimant did not address her claim, "until things were settled being on medical leave."¹¹ It was only then—after several months had already passed—that she reached out to the Canadian Hearing Services for help to pursue her claim.

⁹ See General Division decision at paras 36, 39, and 41. The Supplementary Record of Claim dated December 6, 2021, shows that the Claimant using a sign-language interpreter. See GD 13-10.

¹⁰ See counsellor's email dated September 6, 2023, at GD 9-1.

¹¹ See counsellor's email dated September 6, 2023, at GD 9-1.

Conclusion

[32] An extension of time is granted. As the appeal does not have a reasonable chance of success, permission to appeal is refused. This means that the appeal will not proceed.

Janet Lew
Member, Appeal Division