



Citation: *RN v Canada Employment Insurance Commission*, 2024 SST 453

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

# **Extension of Time and Leave to Appeal Decision**

**Applicant:** R. N.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated October 30, 2019  
(GE-19-3183)

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**Tribunal member:** Solange Losier

**Decision date:** April 30, 2024

**File number:** AD-24-97

## Decision

[1] The application to the Appeal Division was not submitted late.

[2] Leave (permission) to appeal is refused. This means that the appeal will not proceed.

## Overview

[3] R. N. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits.

[4] The Canada Employment Insurance Commission (Commission) decided that he wasn't entitled to get benefits because he voluntarily left his job without just cause.<sup>1</sup>

[5] The General Division concluded the same.<sup>2</sup> It decided that the Claimant made a personal choice to leave his job, so he was disqualified from receiving EI regular benefits. It found there were reasonable alternatives to leaving his job.

[6] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division. He argues that the General Division didn't follow a fair process.

[7] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.<sup>3</sup>

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<sup>1</sup> See Commission's initial decision at pages GD3-22 to GD3-23 and reconsideration decision at pages GD3-31 to GD3-32.

<sup>2</sup> See General Division decision at pages AD1A-1 to AD1A-5 and section 30(1) of the *Employment Insurance Act* (EI Act).

<sup>3</sup> See section 58(2) of the *Department of Employment and Social Development* (DESD Act). I have to refuse leave to appeal if I am satisfied that the appeal has no reasonable chance of success.

## **Preliminary matters**

### **– I sent the Claimant a few letters to ask for additional information**

[8] When the Claimant submitted his application to the Appeal Division he alleged that the General Division didn't provide a fair process.<sup>4</sup> His application also looked like it was submitted late.

[9] So, I wrote the Claimant a letter to ask him for more information.<sup>5</sup> The letter asked him to identify when he received the General Division decision. If there was a delay in receiving it, to explain why. It also asked him to provide reasons for filing his appeal.

[10] The Claimant replied to my letter explaining that he was in a car accident and receiving treatment in 2019.<sup>6</sup> He noted that he has not received anything through the mail or email. He also had no access to his email because he was receiving treatment at that time. He wrote that it was hard for him to follow up with everything in 2019. He argues that "this is an unfairness statement and was not followed."

[11] I wrote back to the Claimant acknowledging his reply, but explained that he didn't answer an important question.<sup>7</sup> In my letter, I asked him what date he received the General Division decision (otherwise known, as the "date of communication").

[12] The Claimant wrote back saying that he did not get any emails from the past about this matter.<sup>8</sup> He assumed it was sent by email. Also, he was not living at that particular address at that time.

### **– I scheduled a case conference**

[13] I scheduled a case conference via teleconference with the parties so that I could explain the law that talks about late appeals and ask the Claimant when the General

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<sup>4</sup> See page AD1-5.

<sup>5</sup> See Tribunal letter dated February 9, 2024.

<sup>6</sup> See pages AD1B-1 to AD1B-2.

<sup>7</sup> See Tribunal letter dated March 12, 2024.

<sup>8</sup> See page AD3-1.

Division decision was communicated to him. I put all of the details in the case conference invitation to the parties.<sup>9</sup>

[14] On April 29, 2024, a case conference was held. The Claimant and the Commission attended the teleconference. I explained the law that talks about late appeals to the parties. I asked the Claimant when he found out about the General Division decision.

[15] The Claimant told me that he got an email in late December 2023, around New Year's Eve with the General Division decision attached. He explained that he had previous problems with his computer and emails loading up, but this particular email was a brand new one. He said that the email came from the Tribunal and he didn't know why it was sent to him.

[16] The Commission had no questions for the Claimant or comments about the date of communication.

[17] A summary of the case conference was sent out to the parties afterwards.<sup>10</sup>

## **Issues**

[18] The issues in this appeal are:

- a) Was the application to the Appeal Division late? If so, should I extend the time for filing the application?
- b) Is there an arguable case that the General Division didn't follow a fair process?

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<sup>9</sup> See pages AD0-1 to AD0-2.

<sup>10</sup> See pages AD4-1 to AD4-3.

## The application was not submitted late

[19] The General Division decision is dated October 28, 2019.<sup>11</sup> The Tribunal received the Claimant's application to the Appeal Division on January 26, 2024.<sup>12</sup>

[20] The deadline to file an application to the Appeal Division in the prescribed form and manner is 30 days after the day on which the General Division decision was communicated to him in writing.<sup>13</sup>

[21] A Claimant can ask the Tribunal for an extension of time to file an appeal with an explanation for why they are late.<sup>14</sup> When deciding whether to grant or refuse an extension of time, the Tribunal has to consider whether there is a reasonable explanation for the delay.<sup>15</sup>

[22] At first glance, it looked like the Claimant's application to the Appeal Division was submitted over a year late. It is important to know that the Tribunal cannot allow an extension of time for appeals that are made more than one year after the day the decision and reasons are communicated in writing.<sup>16</sup>

[23] I reviewed the Claimant's application to the Appeal Division, but he didn't identify the date that he received the General Division decision.<sup>17</sup> I reviewed the file to see if there was any indication that the General Division decision was communicated to him, but I found none. I wrote him two letters to ask him for this information, but he didn't answer that particular question.

[24] Finally, at the case conference, I asked the Claimant about the date of communication. He said that he only found out about the General Division decision

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<sup>11</sup> See General Division decision at pages AD1A-1 to AD1A-5.

<sup>12</sup> See Application to the Appeal Division at pages AD1-1 to AD1-10.

<sup>13</sup> See section 57(1)(a) of the DESD Act.

<sup>14</sup> See section 27(1) of the *Social Security Tribunal Rules of Procedure* (SST Rules).

<sup>15</sup> See section 27(2) of the SST Rules.

<sup>16</sup> See section 57(2) of the DESD Act.

<sup>17</sup> See page AD1-2. There is a question on the application that asks when the General Division decision was received. The Claimant left that part blank.

when he got an email from the Tribunal in late December 2023, around New Year's Eve.

[25] I find it unusual that the Claimant received an unsolicited email from the Tribunal in late December 2023 that included a copy of the General Division decision from October 2019. There is no record of this email from December 2023 in the Tribunal file and the Claimant didn't submit any supporting evidence of that email.

[26] However, I have considered that there is no other evidence in the record that suggests the General Division decision was communicated to him on another date, or an earlier date. The Commission didn't challenge the date of communication either. So, I find it was more likely than not, that the Claimant only found out about the General Division decision in late December 2023, around New Year's Eve as he claimed.

[27] This means that I am accepting that the General Division decision was communicated to the Claimant by December 31, 2023. The Claimant then filed his application to the Appeal Division on January 26, 2024.

[28] I find that the Claimant's application to the Appeal Division was filed on time (within the 30 days) based on the date he says the General Division decision was communicated to him.

## **Analysis**

[29] An appeal can only proceed if the Appeal Division gives permission to appeal.<sup>18</sup>

[30] I must be satisfied that the appeal has a reasonable chance of success.<sup>19</sup> This means that there must be some arguable ground upon which the appeal might succeed.<sup>20</sup>

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<sup>18</sup> See section 56(1) of the DESD Act.

<sup>19</sup> See section 58(2) of the DESD Act.

<sup>20</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115.

[31] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the “grounds of appeal”).<sup>21</sup>

[32] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:<sup>22</sup>

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact

[33] For the appeal to proceed to the next step, I have to find that there is a reasonable chance of success on one of the grounds of appeal.

– **The Claimant argues that the General Division failed to follow a fair process**

[34] The Claimant is arguing that the General Division didn't follow a fair process.<sup>23</sup> To support his position, he wrote the following:<sup>24</sup>

- He did not receive the [General Division] decision in 2019 by email or mail and was not living at that address at the time
- He was trying to get himself back on track due to treatments he was receiving in 2019
- It was hard for him to follow up with everything going on because he was not well
- He had debt to cover, but it was too much for him

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<sup>21</sup> See section 58(1) of the DESD Act.

<sup>22</sup> See section 58(1) of the DESD Act.

<sup>23</sup> See page AD1-4.

<sup>24</sup> See pages AD1B-1 and AD3-1.

- “This is an unfairness statement and was not followed”

[35] If the General Division proceeded in a manner that was unfair, then I can intervene.<sup>25</sup>

– **There is no arguable case that the General Division failed to follow a fair process**

[36] Procedural fairness is about the fairness of the process. It includes procedural protections including the right to an unbiased decision-maker, the right of a party to be heard and to know the case against them and to be given an opportunity to respond.

[37] The General Division had to decide whether the Claimant voluntarily left his job.<sup>26</sup> It had to decide whether he had just cause and if there were any reasonable alternatives, having regard to all the circumstances.<sup>27</sup>

[38] The General Division decided that the Claimant voluntarily left his job on September 10, 2018. This was not disputed by either party.<sup>28</sup>

[39] Following that, the General Division decided that the Claimant made a personal choice to leave his job, and did not have just cause.<sup>29</sup> It found that the Claimant had reasonable alternatives to leaving his job.

[40] The General Division found that some of the reasonable alternatives included: the Claimant obtaining a leave from his job to deal with his medical issues, or asking his employer for modified duties, or to look for other more suitable work prior to quitting.<sup>30</sup>

[41] The Claimant doesn't really explain how the General Division didn't follow a fair process, but rather his arguments appear to amount to a disagreement with the outcome.

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<sup>25</sup> See section 58(1)(a) of the DESD Act.

<sup>26</sup> See section 29(c) of the EI Act.

<sup>27</sup> See section 29(c)(iv) of the EI Act.

<sup>28</sup> See paragraph 9 of the General Division decision.

<sup>29</sup> See paragraph 21 of the General Division decision.

<sup>30</sup> See paragraph 22 of the General Division decision.



[42] I acknowledge that he might be dissatisfied with the General Division's decision and find it unfair, however a disagreement with the outcome isn't enough for me to intervene.

[43] The Appeal Division's role is limited to determining whether the General Division made a specific type of error or errors.<sup>31</sup> This means I can't conduct a rehearing and reweigh the evidence in order to reach a different outcome for the Claimant.<sup>32</sup>

[44] The General Division is the trier of fact and it was free to weigh the evidence (including the medical note) and still decide that he didn't have just cause to leave his job.

[45] I reviewed the file, the General Division decision and listened to the audio recording for the General Division hearing.

[46] I note that the hearing lasted approximately 18 minutes. The General Division asked him relevant questions during the hearing and the Claimant presented his case. The Claimant confirmed that he received the documents sent by the Tribunal, which included his file and the Commission's arguments.<sup>33</sup> The General Division also gave him an opportunity to submit a post hearing document after the hearing (i.e., medical note from his doctor) and he did so.<sup>34</sup>

[47] There is no arguable case that the General Division failed to follow a fair process.

– **There are no other reasons for giving the Claimant permission to appeal**

[48] I did not find any relevant evidence that the General Division might have ignored or misinterpreted.<sup>35</sup> As well, the General Division stated and applied the relevant law.

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<sup>31</sup> See section 58(1) of the DESD Act.

<sup>32</sup> See *Tracey v Canada (Attorney General)*, 2015 FC 1300 and *Cameron v Canada (Attorney General)*, 2018 FC 100.

<sup>33</sup> See audio recording from the General Division hearing at 3:20 to 3:29.

<sup>34</sup> See pages GD8-1 to GD8-2; GD9-1 to GD9-2 and GD10-1.

<sup>35</sup> The Federal Court recommends that I do such a review in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

## **Conclusion**

[49] The application to the Appeal Division was made on time. However, this appeal has no reasonable chance of success.

[50] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier  
Member, Appeal Division