



Citation: *DC v Canada Employment Insurance Commission and X*, 2024 SST 992

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: D. C.

Respondent: Canada Employment Insurance Commission
Representative:

Added Party: X
Representative:

Decision under appeal: General Division decision dated
February 15, 2024 (GE-23-3577)

Tribunal member: Glenn Betteridge

Decision date: August 19, 2024

File number: AD-24-488

Decision

[1] I am not extending the time for D. C. to file his application with the Appeal Division.

[2] This means his appeal won't go ahead and the General Division decision stands unchanged.

Overview

[3] D. C. made a claim for Employment Insurance (EI) regular benefits. So, I will call him the Claimant.

[4] His employer appealed the Canada Employment Insurance Commission (Commission) decision to grant him benefits. The General Division allowed the employer's appeal. It decided that the Claimant lost his job for misconduct under the *Employment Insurance Act* (EI Act). This meant he was disqualified from getting benefits.

[5] The General Division decision is dated February 15, 2024. The Tribunal received his Application to the Appeal Division (application to appeal) on July 24, 2024.

[6] I can extend the 30-day deadline for the Claimant to appeal the General Division decision if he gives a reasonable explanation for why he is late filing his application to appeal.

Issues

[7] I have to decide two issues:

- Was the Claimant's application to appeal late?
- If so, has he given a reasonable explanation why he was late filing his application?

Analysis

The Claimant's application was late

[8] A person has to file their application to appeal a General Division decision no more than 30 days after the day on which the Tribunal communicated the decision to them.¹ If they file their application after 30 days, it's late.

[9] The Tribunal emailed the Claimant the General Division decision on February 15, 2024. Under the Tribunal's rules, unless he shows otherwise, I can assume that he received February 16, 2024.²

[10] The Claimant hasn't argued or shown that he didn't get the Tribunal's email with the decision, or there was a delay in receiving the decision.

[11] This means the Claimant had to file his application to appeal on or before March 18, 2024.

[12] The Tribunal received the Claimant's application to appeal on July 24, 2024.³ This means the Tribunal received his application 159 days after the Tribunal communicated the General Division decision to him, and 129 days after the deadline to appeal it.

[13] In his application to appeal, the Claimant acknowledges that his application to appeal is late.⁴

[14] So, I find that the Claimant's application to appeal was late, but the Tribunal received it less than one year late.⁵ This means I have the power to extend the time for him to appeal.

¹ This is what section 57(1)(a) of the *Department of Employment and Social Development Act* (DESD Act) says.

² See the *Social Security Tribunal Rules of Procedure* (Tribunal Rules) at sections 22(1) and 22(3)

³ See AD1.

⁴ See AD1-5.

⁵ Section 57(2) of DESD Act says the Appeal Division extend the time to appeal unless the person files their appeal more than one year after the day the Tribunal communicates the General Division decision and reasons to the person.

The Claimant doesn't have a reasonable explanation, so I can't extend the time

[15] Under the Tribunal Rules, a person who sends their application to appeal late has to explain why.⁶ If they give a reasonable explanation for why they are late, I should extend the time for them to file their application.⁷

[16] On his application to appeal form, the Claimant writes:

I kindly ask for your understanding and consideration, as I was undergoing medical treatment that required significant time and attention, preventing me from addressing the appeal within the designated timeframe. Please review the attached medical letters from my doctor. The decision made by the general devison [sic] has significantly impacted my financial stability, and I believe that there are strong grounds for appeal that merit reconsideration. I attempted to gather the necessary documentation and seek legal advice as promptly as possible, but these efforts took longer than anticipated.⁸

[17] The Claimant sent seven doctor's notes to support his medical explanation.⁹ Together, the notes cover the period from November 15, 2023 to May 31, 2024. Each note is from the same doctor, and says the same thing, except for the dates:

This is to confirm that the above named patient was seen and assessed in my office on [date] for medical reasons and for these same reasons, he will be off work from [date] to [date]. He is currently under my care.

[18] I find the Claimant hasn't given a reasonable explanation why he is late filing his application to appeal, for the following reasons:

- The doctor's notes don't explain why he couldn't file his appeal on time.
- The doctor's notes don't say anything about restrictions or limitations that would have created barriers for the Claimant to prepare and send in his application by the 30-day deadline.

⁶ See section 27(1) of the Tribunal Rules.

⁷ See section 27(2) of the Tribunal Rules.

⁸ See AD1-5.

⁹ See the doctor's notes at AD1-224 to AD1-230.

- The doctor's notes cover a period of time when he prepared for and participated in the General Division hearing (February 6, 2024). He prepared and sent the tribunal three emails/documents in the days after the General Division hearing.¹⁰ His efforts show me he was in good enough health to participate in a stressful legal process, by speaking and in writing. And he was able to act quickly when he needed to.
- His efforts at the General Division also show me that his medical condition didn't take up too much of his time and attention for him to file his application to appeal by the deadline. He had 30 days, which is much longer than it took him to file post-hearing documents at the General Division.
- The doctor's notes don't say that the Claimant's health condition got worse after the General Division hearing. The doctor's description of his health condition was the same in all the notes.
- The Claimant was able to get legal advice in the days immediately after the General Division hearing. In his February 8, 2024 email he writes, "My lawyer has advised me not to send the video recordings, and I will not be sending, at this time."¹¹ In his February 9, 2024 email he writes, "I have obtained counsel for my wrongful termination, and as such, the recordings should have no impact whatsoever, on my testimony or claim."¹² This tells me he already knew a lawyer who could give him legal advice or a referral. He hasn't explained whether something in his situation changed after he received the General Division decision (one week later), which made it more difficult for him to get legal advice.
- As of June 1, 2024, the Claimant hasn't shown he was medically unfit to return to work. Once his medical situation was no longer an issue, he hasn't

¹⁰ He sent in GD10, GD12, and GD14 after the hearing. GD14 is 14 pages long, and includes original text he wrote, screenshots, captures of text messages, copies of emails, and various other documents.

¹¹ See GD10-1.

¹² See GD12-1.

given a reason why he wasn't able to file his application sooner than July 24, 2024.

[19] I can't consider the merits of the Claimant's appeal when I consider whether he has a reasonable explanation for the delay. Because the merits don't explain the delay. He hasn't explained why his financial circumstances have something to do with the delay. And unfortunately for the Claimant, I can't rely on understanding and consideration to help him show a reasonable explanation.

[20] Finally, the Tribunal's processes are designed to be as simple and quick as fairness allows. It's not reasonable that—in his circumstances—it took him over five months to complete and send in the Application to the Appeal Division—Employment Insurance form. That form is designed to be easy-to-use. To complete it, the Claimant had to check boxes and give brief explanations. He was an on-line tutor and used different programs and platforms to do his job. The documents he sent to the General Division and his application show me that he is able to use computers and is very capable in written English.

[21] In summary, the Claimant hasn't provided a reasonable explanation for why he is late filing his application to appeal the General Division decision. This means I can't extend the time for him to do that.

Conclusion

[22] I am not giving the Claimant more time to file his application to appeal the General Division decision.

Glenn Betteridge
Member, Appeal Division