Citation: *BG v Canada Employment Insurance Commission*, 2024 SST 1683

# Social Security Tribunal of Canada
## Appeal Division

# Extension of Time and Leave to Appeal Decision

| | |
|---|---|
| **Applicant:** | B. G. |
| **Respondent:** | Canada Employment Insurance Commission |

| | |
|---|---|
| **Decision under appeal:** | General Division decision dated August 28, 2024 (GE-23-3474) |

| | |
|---|---|
| **Tribunal member:** | Jude Samson |
| **Decision date:** | November 22, 2024 |
| **File number:** | AD-24-720 |

## Decision

[1] The Claimant, B. G., filed an application to the Appeal Division. His application was late. I'm refusing to give him more time to file his application. In any case, I would have dismissed his application as premature. As a result, the application will not proceed.

## Overview

[2] In a nutshell, this appeal is about whether a claim for Employment Insurance (EI) sickness benefits can be treated as though it was received in 2011. It is one of three decisions that the Claimant has appealed to the Tribunal. And it has travelled back-and-forth between the General and Appeal Divisions.

[3] The Claimant now wants to appeal an interlocutory decision that the General Division made on August 28, 2024. The Claimant has two hurdles to overcome:

- his application is late; and
- the Appeal Division normally refuses to hear appeals from interlocutory decisions.

[4] I've concluded that the Claimant's application is late, and I'm refusing to give him more time to apply. In any case, I would have also dismissed his application as premature.

## Issues

[5] This decision focuses on the following issues:

a) Was the application to the Appeal Division late?

b) Should I extend the time for filing the application?

c) Should the Appeal Division consider the Claimant's appeal of an interlocutory decision?

# Analysis

## The application was late

[6] The interlocutory decision was sent to the Claimant by email on August 29, 2024. I can assume that he received it the next business day.[1]

[7] The Tribunal received the Claimant's application to the Appeal Division on October 24, 2024, well beyond the 30-day time limit.[2] Indeed, the Claimant recognizes that his appeal was late.[3]

## I am not giving the Claimant more time to file his application

[8] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for filing his application late.[4]

[9] The Claimant has provided three main reasons for filing his application late:

- he's not a lawyer or paralegal;
- he only realized that the General Division made an error of law when preparing other arguments that were due to the General Division on October 28, 2024; and
- he was confused because the General Division didn't wait for 30 days after the October 24, 2024, decision before taking its next steps in the appeal.[5]

[10] The Claimant has not provided a reasonable explanation for the delay.

[11] Given the number of appeals he has brought and his various trips to the Appeal Division, the Claimant is very familiar with the Tribunal's processes and timelines. It's also unclear why he expected the General Division to wait 30 days before taking any

---

[1] See section 22(3) of the *Social Security Tribunal Rules of Procedure*.
[2] See section 57(1)(a) of the *Department of Employment and Social Development Act*.
[3] See, for example, the Claimant's explanations on page ADN1-38 and ADN1A-1.
[4] It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure.*
[5] See pages ADN1-38 and ADN1A-1 of the appeal record.

additional steps in his appeal, or what difference that would have made. And if the Claimant was confused, I saw no record that he contacted the Tribunal to seek clarification.

[12] Finally, in its interlocutory decision, the General Division rejected all the Claimant's arguments. I do not understand, therefore, why it would have taken the Claimant so long—and until he was preparing arguments on different issues—to come to the conclusion that the General Division might have made an error in law.

[13] As a result, I refuse to give the Claimant more time to file his application.

## I refuse to consider the Claimant's appeal of the interlocutory decision at this time

[14] Even if I had given the Claimant more time to file his application, I would refuse to consider it at this time.

[15] The Tribunal can make interlocutory decisions throughout a proceeding. For example, someone might ask for their hearing to be rescheduled or for documents to be kept confidential. They're different from final decisions that bring an appeal to its end.

### – The Appeal Division normally refuses to hear appeals from interlocutory decisions

[16] Any General Division decision can be appealed to the Appeal Division.[6] However, the Appeal Division has the power to control its procedures. This includes the ability to not hear appeals that are premature.[7] For that reason, the Appeal Division has said that, except in exceptional circumstances, it will refuse to consider appeals of interlocutory decisions until the General Division has given its final decision in the appeal.[8]

---

[6] See section 55 of the *Department of Employment and Social Development Act*.
[7] See *Prassad v Canada (Minister of Employment and Immigration)*, 1989 CanLII 131.
[8] See *MW v Canada Employment Insurance Commission*, 2022 SST 338 and *RP v Minister of Employment and Social Development*, 2022 SST 242.

[17] This doesn't mean that the Appeal Division refuses to consider interlocutory decisions altogether. Instead, the General Division proceeding should be allowed to run its course. Then the Appeal Division can consider all issues at the same time, based on a complete record.

[18] I agree with the reasoning in these Appeal Division decisions and have decided to follow them.

[19] This conclusion is reinforced by the approach taken in the Federal Courts. They are also reluctant to hear challenges from interlocutory decisions.[9] The Court has said that it wants to avoid fragmented proceedings, along with the associated costs and delays that can be incurred.[10] Plus, proceedings can become moot (irrelevant) if the person trying to challenge the interlocutory decision wins their case in the end.

– **There are no exceptional circumstances in this case**

[20] The Claimant argues that the Appeal Division should consider his appeal now because it focuses on just two issues (and his other issues with the interlocutory decision can wait until the end of the General Division's process). Specifically, he argues that the General Division made an error in its application of the *Canadian Bill of Rights* and that the Appeal Division should clarify what it meant by the word "afresh" in one of its previous decisions.[11]

[21] The Claimant argues that these are clear errors that affect the General's Division's process, and that he wants to avoid having his appeal sent back to the General Division yet again.

[22] The Claimant's arguments don't amount to exceptional circumstances that would justify considering his appeal now.

---

[9] See *Dugré v Canada (Attorney General)*, 2021 FCA 8 and *Herbert v Canada (Attorney General)*, 2022 FCA 11.
[10] See *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paragraphs 32–33.
[11] See the Claimant's arguments on pages ADN3-3 to 4.

[23] Specifically, I'm not at all convinced that the Claimant's proposal of fragmenting the appeal into narrow legal issues is the most efficient way of proceeding. In fact, Courts have also said that important legal or constitutional issues are not an exceptional circumstance that justifies interfering with an ongoing proceeding.[12] I agree.

[24] Plus, the Appeal Division isn't able to interpret previous decisions. If the Claimant has lingering concerns about the General Division's process being unfair, he should raise them with the General Division. The General Division has to be given a chance to make any changes or provide any clarifications that might be needed.

[25] I also disagree with how the Claimant is arguing that his appeal is focused on just two issues. For example, in paragraph 27 of his application, the Claimant wrote: "I also ask that the Appeal [Division] also reconsider the entire arguments in my Motion and rule that the Regulations were not followed and that it would be unjust to continue to deny my claim(s)."[13]

[26] To summarize, allowing the Claimant to appeal the interlocutory decision would unnecessarily fragment the General Division's process, lead to additional delays, and risk more back-and-forth between the General and Appeal Divisions.

[27] In terms of logistics, the Claimant will have 30 days to appeal the General Division's final decision after it's made. If he chooses to appeal that decision, the Claimant can file one Application to the Appeal Division. In his application, the Claimant should highlight any interlocutory decisions that were made throughout the process, and that he also wants to challenge.

[28] In the circumstances, the Claimant hasn't shown exceptional circumstances that justify considering his application now. The Tribunal has to provide the Claimant with a fair process. It's not obliged to decide the Claimant's numerous and complex arguments in his preferred order.

---

[12] See *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paragraph 33.
[13] See page ADN1-33.

[29] The General Division should be allowed to finish its work and give a final decision in the appeal.

## Conclusion

[30] I'm refusing to give the Claimant more time to file his application. But even if I had given him more time, I would have dismissed his application as premature. The Appeal Division shouldn't normally hear appeals from interlocutory decisions. The Claimant hasn't shown exceptional circumstances for proceeding sooner in his case.

Jude Samson
Member, Appeal Division