

SST APPEALS: HOW TO CHALLENGE EI DECISIONS

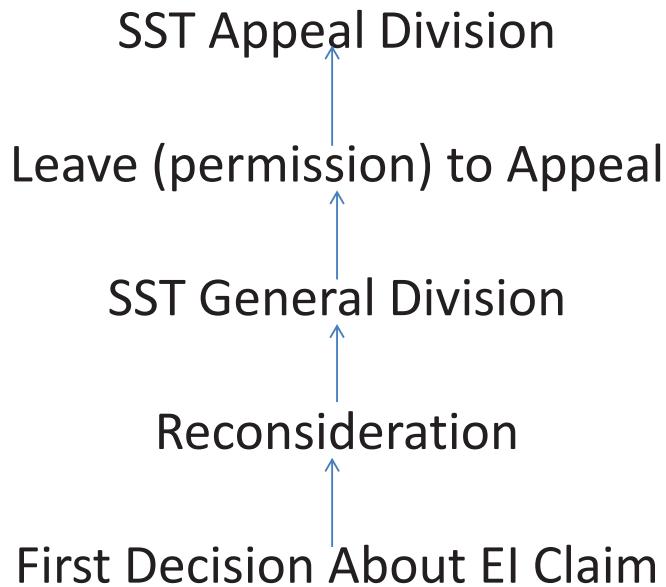
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Community Legal Assistance Society
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What We Will Do

- Look at different stages of the reconsideration and appeal process.
- Look at how to effectively represent your client.
- Look at resources that are available.

Overview



The First Decision About EI Claim

- Canada Employment Insurance Commission (the “EI Commission”)
- Administered through Service Canada.
- Can apply for EI online through Service Canada website.

Reconsideration

- Before appealing to SST, must ask the EI Commission to reconsider.
- Deadline is 30 day from first communication (may be verbal).
- Request for Reconsideration Form (Form SC-INS5210).
- Client must sign consent “Consent to Disclosure and/or use of Personal EI Information” (Form SC-INS3124) for you to represent them.
- Can send request for reconsideration by mail or submit in person.
- For in person, apparently need to make service request due to COVID:
<https://eservices.canada.ca/en/service/>
- Government of Canada has a very awkward catalogue of forms:
<https://catalogue.servicecanada.gc.ca/content/EForms/en/Index.html>

Reconsideration: Requesting the File

- Commission may not give you all information from the file.
- Can make access to information request.
- Google “Canada ATIP Request Online” or go to <https://atip-aiprapps.gc.ca/atip/welcome.do>
- Select “Employment and Social Development Canada” as the department you are directing it to.
- If necessary, do right away.

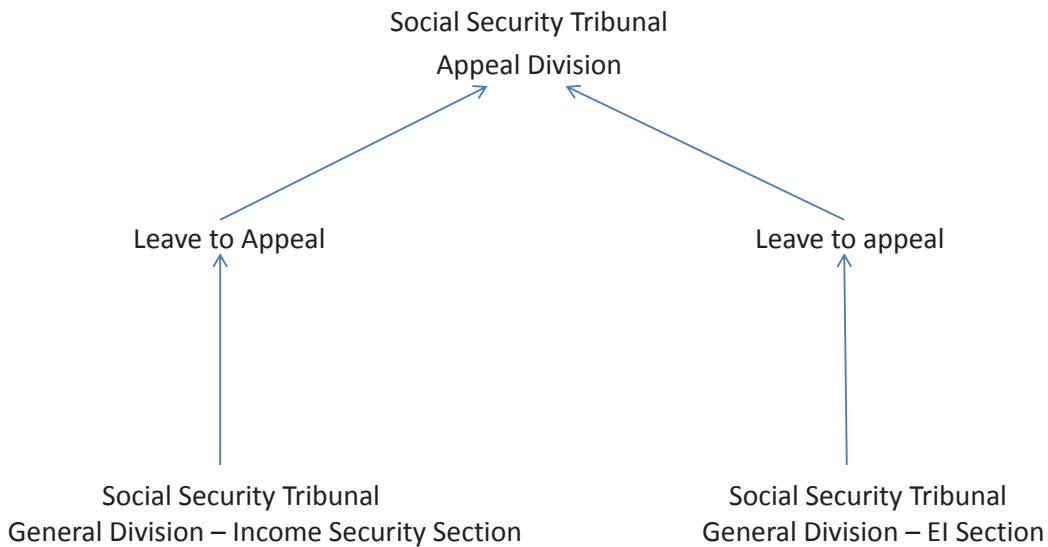
Reconsideration: The Decision

- No formal hearing.
- Will usually call to give decision, especially if recon denied.
- Will also get decision letter in writing.
- Reconsideration decisions often give very little in the way of reasons.

What Decisions Cannot Be Reconsidered or Appealed?

- A decision refusing to write-off (forgive) an EI debt.
- Certain discretionary decisions about “Employment Benefits” (training benefits):
 - Benefits to help people get back to work.
 - Decisions not to refer a claimant to training or a course.
- Decisions made by CRA:
 - How many hours person worked or earned;
 - When employment started and ended; and
 - Whether work is covered by the EI system.

The Social Security Tribunal



SST General Division

- Deadline to appeal is 30 days from when recon decision communicated.
- Extensions possible, but not past 12 months after decision communicated.
- Notice of Appeal available on SST website.
- Can send by mail, fax, email.
- Must include copy of reconsideration decision.
- Incomplete notices of appeal will get letter with time limit to provide missing info.
- Employer can also appeal.

SST General Division

- SSTGD will request file from Commission. Usually takes 7 days. Will then send to parties.
- No need to resubmit evidence already in Commission file.
- Can submit new evidence. No set deadline but might get adjourned if too close to hearing.
- Tribunal member may refuse to consider documents that were not submitted before the hearing.
- SSTGD sends all communications and new evidence to other parties.

Representations of the Commission

- Very important!
- Recon decisions often have very little info.
- This will better explain the Commission's view.
- Help you know what to address.
- Can send documents and submissions in response.

Deemed Receipt of Documents

- Regular mail: 10 days after document was put in mail.
- Registered mail or a courier: Day someone signs for it, or the day it is successfully delivered to last known address.
- Fax or email: Next business day after it was sent.

Summary Dismissal

- SSTGD can dismiss an appeal without a hearing if it has no reasonable chance of success.
- You will get a letter and a chance to explain.
- Common example: Person admits they do not have enough hours but thinks they should get EI out of fairness.

Hearing Types

- If not summarily dismissed, will get notice of hearing.
- Hearing can be:
 - In person
 - Video (now using Zoom)
 - Phone
 - Written question and answer
- SST will provide interpreter at hearing. No translation of documents though.

Adjournments

- Can ask to reschedule within two business days of getting notice of hearing. No need to provide reason.
- Can just call, but might want to send written request too.
- After two days, must ask for adjournment in writing explaining reason.
- Can only get second adjournment in exceptional circumstances.

Hearing

- Usually lasts 1 hour.
- Loosely follows “trial” format, but much less formal.
- Witnesses will be asked to take oath. Can be questioned by tribunal member and other parties.

Decisions

- Decision will be in writing.
- Anonymized when published.
- SSTGD tries to make most decisions within 45 days of appeal being filed and 15 days of hearing.

A.K.

- A.K. comes to your office. She applied for EI but was denied because she quit her job.
- She says she asked the EI people to change their mind but they wouldn't.
- She wants to know what her next steps are.
- Before getting into the details of her case, what information or documents would you need to assess her options and deadlines?

A.K.

- With your help, A.K. appeals to the SSTGD.
- The SSTGD sends you the file containing Representations from the Commission.
- Read the representations. What information would you want from A.K.?

A.K.

- A.K. tells you that there was a staff meeting where employees were told to expect their hours to be cut.
- Part-time staff, which she was, should expect their hours to be cut first, possibly to zero.
- Recently she was cut to two shifts per week even though she was hired to work four shifts per week.
- She says that her relationship with her employer was not too bad outside of her boss refusing to give her time-off to do the contract.
- She thought that the short term contract would lead to long term employment.
- What circumstances in s. 29(c) might be relevant?

A. K. v Canada Employment Insurance Commission, 2020 SST 506

[15] The law says that you have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.

[22] The law states that one of the circumstances to have regard to in considering whether the Claimant had just cause for her voluntary leaving is a reasonable assurance of another employment in the immediate future.

A. K. v Canada Employment Insurance Commission, 2020 SST 506

[27] I find the Claimant had the reasonable alternative of remaining in her employment at the fabric store because it was permanent employment, rather than voluntarily leaving for employment that was temporary....

[33] I find the Claimant made a personal decision to separate from her employment. While I acknowledge her desire to want to earn more money, have a change, and keep up her career, she cannot expect those who contribute to the employment insurance fund to bear the costs of her decision to leave her employment in an attempt to do so.

[34] The Claimant failed to pursue any of the above-noted reasonable alternatives and, therefore she failed to prove that she was left with no reasonable alternative but to leave her employment. As a result, the Claimant has not proven she had just cause for leaving her employment.

SST Appeal Division

- No automatic appeal. Must get leave (permission).
- Exception if case was summarily dismissed. Can file an appeal without leave (permission).
- Deadline to apply for leave is 30 days after SSTGD decision communicated.
- Application form on SST website.
- Must attach copy of SSTGD decision.
- Commission and the employer can also seek leave to appeal.

SST Appeal Division: Grounds for Appeal

- Unlike SSTGD, not a completely new hearing.
- Can only appeal based on very specific errors:
 - SSTGD breached of procedural fairness.
 - SSTGD acted without jurisdiction.
 - SSTGD erred in law.
 - SSTGD decision based on erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.
- Generally no new evidence.

SST Appeal Division: The Leave Decision

- Generally no hearing.
- The SSTAD will either grant or deny leave to appeal.
- If leave is denied, that ends the appeal.
- If leave is granted, the SSTAD will hear the appeal.
- Generally SSTAD tries to make leave decision within 45 days.

SST Appeal Division: The Appeal Process

- Have 45 days after leave granted to file written submissions, though can ask for extension.
- No requirement for a hearing.
- If there is a hearing, will get notice of hearing.
- Focus on grounds for appeal. Not a completely new hearing.
- SSTAD tries to schedule hearing within 90 days after leave granted.

SST Appeal Division: The Decision

- If appeal denied, that is last level of appeal (short of judicial review in FCA).
- If appeal is allowed, SSTAD can:
 - Send the matter back to the SSTGD.
 - Make the decision the SSTGD should have made.
- Your appeal should address which you want the SSTAD to do:
 - Would opportunity to submit new evidence at SSTGD help?
 - Would it be beneficial to argue the case from scratch?
 - Impact of delay on client?
- Appears to be big push not to refer things back to SSTGD.
- Decision will be in writing. SSTAD tries to make decisions no more than 60 days after hearing.

A.K. (SSTGD Decision)

[15] The law says that you have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.

[22] The law states that one of the circumstances to have regard to in considering whether the Claimant had just cause for her voluntary leaving is a reasonable assurance of another employment in the immediate future.

A.K. (SSTGD Decision)

[27] I find the Claimant had the reasonable alternative of remaining in her employment at the fabric store because it was permanent employment, rather than voluntarily leaving for employment that was temporary.

[33] I find the Claimant made a personal decision to separate from her employment. While I acknowledge her desire to want to earn more money, have a change, and keep up her career, she cannot expect those who contribute to the employment insurance fund to bear the costs of her decision to leave her employment in an attempt to do so.

[34] The Claimant failed to pursue any of the above-noted reasonable alternatives and, therefore she failed to prove that she was left with no reasonable alternative but to leave her employment. As a result, the Claimant has not proven she had just cause for leaving her employment.

A.K.

- Are there possible grounds for appeal to the SST Appeal Division?
- Assume there is nothing in the decision talking about the reduction in her hours at the fabric store.

A. K. v Canada Employment Insurance Commission, 2020 SST 499

[8] The General Division made an error of law. The General Division considered only whether the Claimant had “a reasonable assurance of another employment in the immediate future.” It made no finding as to whether the changes to the Claimant’s hours represented a significant change to the terms and conditions of her wages, and did not consider how that circumstance affected the Claimant’s reasonable alternatives.

[16] The General Division made an error of law when it found that the Claimant had the reasonable alternative of remaining employed without considering all the relevant circumstances. The General Division did not consider the Claimant’s significant reduction in hours and earnings. This is clearly relevant to whether staying with the employer was a reasonable alternative.

[17] I have found that the General Division made an error of law. That means I must consider the appropriate remedy.

A. K. v Canada Employment Insurance Commission, 2020 SST 499

[18] I have the authority to change the General Division decision or make the decision that the General Division should have made. I could also send the matter back to the General Division to reconsider its decision.

[19] I accept that the General Division has already considered all the issues raised by this case and that I can make the decision based on the evidence that was before the General Division. I will make the decision that the General Division should have made.

[32] Having regard to all the circumstances, I find that the Claimant had no reasonable alternative to leaving her employment and that she therefore had just cause for leaving.

Application to Rescind or Amend

- SST (either division) can rescind or amend a decision if:
 - New facts presented; or
 - Decision made without knowledge of, or based on a mistake about, some material fact.
- Appeals go up a level (i.e. from GD to AD)
- Applications to rescind or amend go back to same level (i.e. GD reconsiders its own decision)
- Not an opportunity to just reargue the appeal.

Resources

- SST website:
 - Has links to forms
 - Has links to legislation and regulation
 - Can search decisions
 - Has “how to guides”
 - “EI reference tool” with list of cases on key issues
- Canlii reports SST decision.
- Digest of Benefit Entitlement Principles.
- Annotated EI Act (available at court library).

Insurability Rulings

- Some decisions made by CRA, not the EI Commission:
 - How many hours person worked;
 - How much money they earned;
 - When employment started and ended; and
 - Whether work is covered by the EI system.
- Commission can request a decision from CRA anytime.
- Workers’ deadline to request ruling is June 29 after year work done.
- Can apply online through CRA account or in writing.
- Can you use Form RC4110 – “Employee or Self-Employed”

Insurability Appeals

- Important to appeal “insurability decisions” separately.
- Can appeal to Minister of National Revenue (CRA Appeals Division) within 90 days.
- Can appeal through CRA online account or using form CPT100 - “Appeal of a ruling under the Canada Pension Plan and/or Employment Insurance Act”.
- Process is more like an investigation.
- Can then appeal to Tax Court: 90 days.

Insurability Appeals: Resources

- Guide RC4110 - “Employee or Self-Employed?”
- Booklet P133 – Your Appeal Rights

Questions?