

Federal Court



Cour fédérale

**Date: 20190723**

**Docket: T-1780-17**

**Citation: 2019 FC 972**

**Ottawa, Ontario, July 23, 2019**

**PRESENT: Mr Justice James W. O'Reilly**

**BETWEEN:**

**NICOLA VANESSA ALEXANDER**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In September 2013, Ms Nicola Vanessa Alexander applied for employment insurance benefits. Her application was approved. Taking into account the severance payment she received from her previous employer, Ms Alexander was entitled to benefits beginning on June 1, 2014 for a duration of 23 weeks.

[2] On August 8, 2014, according to Ms Alexander, she asked for a suspension of her benefits because she had to leave the country to attend to family business in St Vincent. She left Canada on August 15, 2014 and returned on July 27, 2016; she sought to renew her claim on August 5, 2016.

[3] Before she left Canada, Ms Alexander received 18 weeks of benefits out of her total entitlement of 23 weeks. This case is about whether Ms Alexander is entitled to any remaining benefits.

[4] The Canada Employment Insurance Commission denied Ms Alexander's request to renew her benefits. She appealed the Commission's decision to the General Division of the Social Security Tribunal (SST), which found that she could receive benefits only within a period of 52 weeks after they began. In Ms Alexander's case, since her benefit period began in September 2013, she would normally have had to claim any outstanding benefits prior to September 2014. An extension of that period for another year might have been available, but that would allow Ms Alexander to receive benefits only until September 2015. Ms Alexander returned to Canada on July 27, 2016, well outside the benefit period.

[5] Ms Alexander appealed the General Division's decision to the Appeal Division of the SST, which concluded that her appeal had no reasonable chance of success and refused her application for leave to appeal.

[6] Ms Alexander argues that the General Division applied the wrong provisions of the *Employment Insurance Act*, SC 1996, c 23 [EIA]. Accordingly, she argues that the Appeal Division unreasonably denied her leave to appeal. She asks me to quash the Appeal Division's decision and order another panel of the SST to reconsider her claim.

[7] I can find no basis for overturning the Appeal Division's decision and must, therefore, dismiss this application for judicial review. The only issue is whether the Appeal Division's decision was unreasonable.

## II. The Statutory Scheme

[8] The period within which a person can claim employment insurance, generally speaking, is 52 weeks, according to s 10(2) of the EIA. The Commission can cancel a benefit period if an employee shows that a new benefit period should be applied and that there is good cause for making a delayed benefit request, but only if no benefits have been paid during the usual benefit period (s 10(6)). The benefit period of 52 weeks can be extended in situations where a person was not entitled to benefits due to incarceration, severance pay, workers' compensation, or other good cause.

### A. *Was the Appeal Division's decision unreasonable?*

[9] The Appeal Division found that Ms Alexander's appeal had no reasonable chance of success because the maximum extension of the benefit period could extend only as far as September 15, 2015 and Ms Alexander did not return to Canada until July 27, 2016.

[10] While Ms Alexander claims that she was informed by Commission staff that she could renew her benefit claim when she returned from abroad, there is no scenario in which an employee could authorize a benefit payment that went beyond what the statute allows. The ultimate deadline for making a claim under the Act, even with an extension, is 104 weeks from the beginning of the benefit period. Ms Alexander argues that the benefit period began when she actually started receiving benefits in June 2014, but even on that scenario, the benefit period ran until June 1, 2016, at the latest, before she returned to Canada.

[11] In the alternative, Ms Alexander contends that she returned to Canada 102 weeks after her benefits period began and, therefore, that she was still eligible for the benefits that remained owing to her. This submission is based on the date on which Ms Alexander requested a suspension of her benefits (August 8, 2014) and the date on which she returned to Canada (July 27, 2016).

[12] However, as mentioned above, Ms Alexander could not have requested a benefit period beginning on August 8, 2014, as she had already begun receiving benefits at that point.

[13] Therefore, I can conceive of no scenario in which Ms Alexander would have been eligible for any further benefits after her return to Canada on July 27, 2016. Accordingly, the Appeal Division's conclusion that Ms Alexander's appeal had no reasonable chance of success was not unreasonable.

III. Conclusion and Disposition

[14] The Appeal Division's conclusion that Ms Alexander's appeal had no reasonable chance of success was not unreasonable. Therefore, I must dismiss this application for judicial review, with costs.

**JUDGMENT IN T-1780-17**

**THIS COURT'S JUDGMENT is that:**

1. The style of cause is amended to name the Attorney General of Canada as respondent.

The application for judicial review is dismissed, with costs.

"James W. O'Reilly"

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Judge

## Annex

<i>Employment Insurance Act, SC</i> 1996, c 23	<i>Loi sur l'assurance-emploi, LC</i> 1996, ch 23
Length of benefit period	Durée de la période de prestations
10(2) Except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period of 52 week	10(2) Sous réserve des paragraphes (10) à (15) et de l'article 24, la durée d'une période de prestations est de cinquante-deux semaines.
Cancelling benefit period	Annulation de la période de prestations
10(6) Once a benefit period has been established for a claimant, the Commission may	10(6) Lorsqu'une période de prestations a été établie au profit d'un prestataire, la Commission peut :
(a) cancel the benefit period if it has ended and no benefits were paid or payable during the period; or	a) annuler cette période si elle est terminée et si aucune prestation n'a été payée, ou ne devait l'être, pendant cette période;
(b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant	b) à la demande du prestataire, que la période soit ou non terminée, annuler la partie de cette période qui précède la première semaine à l'égard de laquelle des prestations ont été payées ou devaient l'être si :
(i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a	(i) d'une part, une nouvelle période de prestations, commençant cette semaine-là, est, si ce prestataire est un assuré, établie à son profit au titre de la présente partie ou est, si ce prestataire est un travailleur indépendant au sens du paragraphe 152.01(1),

new benefit period beginning the first week for which benefits were paid or payable, and

(ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.

établie à son profit au titre de la partie VII.1;

(ii) d'autre part, le prestataire démontre qu'il avait, durant toute la période écoulée entre la date à laquelle des prestations lui ont été payées ou devaient l'être et la date de sa demande d'annulation, un motif valable justifiant son retard.



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1780-17

**STYLE OF CAUSE:** NICOLA VANESSA ALEXANDER v ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 8, 2019

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** JULY 23, 2019

**APPEARANCES:**

Ms Nicola V. Alexander FOR THE APPLICANT - SELF-REPRESENTED

Mr. Marcus Dimberger FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Deputy Attorney General of FOR THE RESPONDENT  
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Toronto, Ontario