

Citation: *T. H. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 70

Appeal #: GE-13-2240

BETWEEN:

**T. H.**

Appellant  
Claimant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance**

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SOCIAL SECURITY TRIBUNAL MEMBER: Richard Sterne

HEARING DATE: April 10, 2014

TYPE OF HEARING: Teleconference

DECISION: Appeal is dismissed.

## **PERSONS IN ATTENDANCE**

The Claimant, T. H., attended the hearing by telephone.

## **DECISION**

[1] The Tribunal finds that the Canada Employment Insurance Commission (Commission) did make its decision to refuse to reconsider its May 15, 2013 decision in a judicial manner, pursuant to the Reconsideration Request Regulations.

[2] The appeal is dismissed.

## **INTRODUCTION**

[3] On March 22, 2013, the Claimant voluntarily left his employment in Victoria BC to move back to Ontario because it was too expensive to live in Victoria, and to be closer to family.

[4] On April 3, 2013, the Claimant filed for employment insurance benefits (EI benefits).

[5] On May 15, 2013, the Commission advised the Claimant that they were unable to pay him any EI benefits because he had voluntarily left his employment without just cause within the meaning of the *Employment Insurance Act* (Act).

[6] On October 23, 2013, the Claimant filed a request for reconsideration of the Commission's May 15, 2013 decision.

[7] On November 5, 2013, the Commission advised the Claimant that they would not be reconsidering its May 15, 2013 decision, because it did not meet the Reconsideration Request Regulations.

## **FORM OF HEARING**

[8] The hearing was held by teleconference for the reasons provided in the Notice of Hearing dated March 20, 2014.

## **ISSUE**

[9] Did the Commission refuse to reconsider their May 15, 2013 decision in a judicial manner, pursuant to the Reconsideration Request Regulations?

## **THE LAW**

### **[10] Section 29 of the Act:**

For the purposes of sections 30 to 33,

(a) "employment" refers to any employment of the claimant within their qualifying period or their benefit period;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

- (i) sexual or other harassment,
- (ii) obligation to accompany a spouse or common-law partner or a dependent child to another residence,
- (iii) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act,
- (iv) working conditions that constitute a danger to health or safety,
- (v) obligation to care for a child or a member of the immediate family,
- (vi) reasonable assurance of another employment in the immediate future,
- (vii) significant modification of terms and conditions respecting wages or salary,
- (viii) excessive overtime work or refusal to pay for overtime work,
- (ix) significant changes in work duties,
- (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,
- (xi) practices of an employer that are contrary to law,
- (xii) discrimination with regard to employment because of membership in an association, organization or union of workers,
- (xiii) undue pressure by an employer on the claimant to leave their employment, and
- (xiv) any other reasonable circumstances that are prescribed.

**[11] Subsection 30(1) of the Act:**

(1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment."

**[12] Subsection 30(2) of the Act:**

(2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

**[13] Section 112 of the Act:**

(1) A claimant or other person who is the subject of a decision of the Commission, or the employer of the claimant, may make a request to the Commission in the prescribed form and manner for a reconsideration of that decision at any time within

(a) 30 days after the day on which a decision is communicated to them; or

(b) any further time that the Commission may allow.

(2) The Commission must reconsider its decision if a request is made under subsection (1).

(3) The Governor in Council may make regulations setting out the circumstances in which the Commission may allow a longer period to make a request under subsection (1).

**[14] Section 51.1 of the Regulations**

For the purposes of subparagraph 29(c)(xiv) of the Act, other reasonable circumstances include

(a) circumstances in which a claimant has an obligation to accompany to another residence a person with whom the claimant has been cohabiting in a conjugal relationship for a period of less than one year and where

(i) the claimant or that person has had a child during that period or has adopted a child during that period,

(ii) the claimant or that person is expecting the birth of a child, or

(iii) a child has been placed with the claimant or that person during that period for the purpose of adoption; and

(b) circumstances in which a claimant has an obligation to care for a member of their immediate family within the meaning of subsection 55(2).

**EVIDENCE**

[15] The Claimant was employed in Victoria BC by N. Harris Computer Corporation (employer) from August 15, 2011 to March 22, 2013.

[16] On April 3, 2013, the Claimant filed for EI benefits. In his application, the Claimant quit his job to follow his spouse to a new residence.

[17] On May 13, 2013, the Claimant told the Commission that he had been living with his wife in Victoria BC for the last 2 years but both of them came from Ontario. All of their

families were still in Ontario, so they decided to go back to Ontario because it was too expensive to live in Victoria, the job opportunities were better in Ontario, and to be closer to their families. They tried to find jobs before they moved, but the distance made it hard. They got some interviews and used Skype but were unsuccessful.

[18] On May 15, 2013, the Commission advised the Claimant that they were unable to pay him any EI benefits starting March 24, 2013 because he had voluntarily left his employment with the employer on March 22, 2013 without just cause within the meaning of the Act. The Commission stated that they believed that voluntarily leaving his employment was not his only reasonable alternative.

[19] On October 23, 2013, the Claimant filed a request for reconsideration of the Commission's May 15, 2013 decision. The Claimant stated that he voluntarily left his employment to return to Ontario to be close to family and to find a lower cost of living.

[20] On November 5, 2013, the Claimant told the Commission that he did not file his request for reconsideration sooner because he had fully expected to secure full employment within three months of his move. The Claimant said that he had fully planned for a 3 month term of unemployment, but now that 6 months had passed without income and that he was considered too old for the workforce, was causing undue stress and pressure.

[21] On November 5, 2013, the Commission advised the Claimant that they would not be reconsidering its May 15, 2013 decision. The Commission stated that a claimant may request a reconsideration of a decision within 30 days after the day on which their decision was communicated to him. However, on the date that the Claimant had requested reconsideration, more than 30 days had passed since the decision had been communicated to him. The Commission said that they had considered the explanation with respect to the delay in requesting reconsideration; however, that it did not meet the requirements of the Reconsideration Request Regulations.

## **SUBMISSIONS**

[22] The Claimant submitted that:

- a. he had voluntarily left his job in Victoria BC to return to live with family in Ontario, because it was too costly to live in Victoria and he felt isolated being so far away from his family.
- b. he had made the decision to move to further his career in computer and information systems.
- c. he had originally accepted the Commission's May 15, 2013 decision to disqualify him from receiving EI benefits because he had voluntarily left his job without just cause pursuant to the Act, so he did not request reconsideration of their decision.
- d. unfortunately, he had not been successful in finding a job in Ontario after six months of looking, which had become a financial stress.
- e. he respectively requested reconsideration of the Commission's decision not to reconsider their May 15, 2013 decision based on the passing of the 30 day deadline.

[23] The Respondent submitted that:

- a. on May 15, 2013, they had disqualified the Claimant from receiving EI benefits because he had voluntarily left his job without just cause pursuant to the Act. They believed that he had not proved that he had considered all reasonable alternatives.
- b. they had considered the explanation the Claimant provided with respect to the delay in requesting reconsideration of their May 15, 2013 decision, however they determined that it did not meet the requirements of the Reconsideration Request Regulations.
- c. the Commission would not reconsider its May 15, 2013 decision.



## ANALYSIS

[24] Subsection 112(1)(a) of the Act states that a claimant may request reconsideration of a Commission's decision within 30 days after the day on which a decision is communicated to them.

[25] Subsection 112(1)(b) of the Act states that the Commission may allow further time to a claimant to submit a request for reconsideration.

[26] Section 1 of the Reconsideration Request Regulations sets out the test a person must meet to obtain an extension of time to seek a reconsideration under paragraph 112(1)(b) of the Act.

[27] Subsection 1(1) of the Reconsideration Request Regulations stipulates that the Commission may allow further time if it is satisfied that:

- there is a reasonable explanation for requesting a longer period; and
- the person has demonstrated a continuing intention to request a reconsideration.

[28] Subsection 1(2) of the Reconsideration Request Regulations sets out additional requirements to be met in particular circumstances. In addition to the requirements outlined in subsection 1(1), the Commission must also be satisfied that:

- the request for reconsideration has a reasonable chance of success; and
- no prejudice would be caused to the Commission or a party by allowing a longer period to make the request.

The criteria set out in subsection 1(2) only apply if the request for reconsideration

(a) is made after the 365-day period after the day on which the decision was communicated to the person;

(b) is made by a person who submitted another application for benefits after the decision was communicated to the person; or

(c) is made by a person who has requested the Commission to rescind or amend the decision under section 111 of the EI Act.

[29] If a Commission decision on an extension of time to seek a reconsideration is appealed, the only issue before the Tribunal for determination is whether an extension of time for the reconsideration should be granted. The merits of the initial decision are not before the Tribunal.

[30] During the hearing, the Claimant explained his reasons for voluntarily leaving his employment in Victoria BC and moving to Ontario; being that it was too expensive to live in Victoria and that he wanted to be closer to family in Ontario. The Claimant said that he had looked for employment in Ontario before voluntarily leaving his job without success.

[31] On May 15, 2013, the Commission advised the Claimant that they were unable to pay him any EI benefits because he had voluntarily left his employment with the employer without just cause within the meaning of the Act and that they believed that voluntarily leaving his employment was not his only reasonable alternative.

[32] The Claimant stated that he initially accepted the Commission's May 15, 2013 decision and did not file a request for reconsideration because of pride and the fact that he was confident of finding other employment in a timely fashion. He said that he was financially prepared for a three month job search, but after six months and no success in finding another job that he was having financial difficulties.

[33] On October 23, 2013, the Claimant filed a request for reconsideration of the Commission's May 15, 2013 decision which was denied on November 5, 2013, because it did not meet the requirements of the Reconsideration Request Regulations.

[34] The Tribunal has sympathy for the Claimant's job and financial situation. However, the Tribunal finds that the Claimant's explanation for his five month delay in filing a request for reconsideration, being pride and the fact that he would quickly find another job, is not a reasonable explanation of his delay and does not meet the requirements of the Reconsideration Request Regulations.

[35] The Tribunal finds that the Claimant's five month delay in filing does not demonstrate a continuing intention to request reconsideration.

[36] The Tribunal finds that the Commission made their decision not to allow an extension in time to file a request for reconsideration in a judicial manner, because they considered the five month delay and the Claimant's explanation for not filing sooner.

[37] Case law applicable to the extension of time to appeal holds that the Commission's power to extend the deadline within which to appeal the Commission's decision is discretionary and its decision to allow or refuse an extension could only be reversed if it exercised its discretion "non-judicially" or if the decision was based on irrelevant considerations or without taking relevant considerations into account (**Knowler A-445-93; Chartier A-42-90; Plourde A-80-90** ).

## **CONCLUSION**

[38] The appeal is dismissed.

Richard Sterne  
Member, General Division

DATED: July 14, 2013.