

Citation: *A. H. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 139

Appeal #: GE-14-3061

BETWEEN:

**A. 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: Eleni Palantzas

HEARING DATE: December 2, 2014

TYPE OF HEARING: Teleconference

DECISION: Appeal is dismissed

## **PERSONS IN ATTENDANCE**

The Claimant, Mr. A. H., participated in the hearing by teleconference.

## **DECISION**

[1] The Member finds that the Canada Employment Insurance Commission (Commission) correctly denied the Claimant's request to extend the 30-day period for reconsideration of its August 18, 2010 decision pursuant to sections 112 of the *Employment Insurance Act* (EI Act) and section 1 of the *Reconsideration Request Regulations*.

## **INTRODUCTION**

[2] On August 21, 2010, the Commission imposed a disentitlement for a two week period when the Claimant was not in Canada. The Claimant did not request a reconsideration of that decision until almost 4 years later, on April 8, 2014.

[3] On July 16, 2014, the Commission denied the Claimant's request to extend the 30- day period to make a request for reconsideration of its decision.

[4] On August 6, 2014 the Claimant appealed to the General Division of the Social Security Tribunal (Tribunal).

## **FORM OF HEARING**

[5] After reviewing the evidence and submissions of the parties to the appeal, the Member decided to hold the hearing by teleconference for the reasons provided in the Notice of Hearing dated October 17, 2014.

## **ISSUE**

[6] Whether the Claimant's request to extend the 30-day period for reconsideration of the Commission's August 18, 2010 decision should have been denied.

## THE LAW

[7] Subsection 112(1) of the EI Act states that 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.

[8] Subsection 112(2) states that the Commission must reconsider its decision if a request is made under subsection (1).

[9] Subsection 1(1) of the *Reconsideration Request Regulations* states that for the for the purposes of paragraph 112(1)(b) of the *Employment Insurance Act* and subject to subsection (2) below, the Commission may allow a longer period to make a request for reconsideration of a decision if the Commission 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.

[10] Subsection 1(2) of the *Reconsideration Request Regulations* states that the Commission must also be satisfied that the request for reconsideration has a reasonable chance of success, and that no prejudice would be caused to the Commission or a party by allowing a longer period to make the request, 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 *Employment Insurance Act*.

## **EVIDENCE**

[11] On March 31, 2010, the Claimant had responded to the Commission's questionnaire regarding his absence from Canada from June 10, 2009 to June 24, 2009. He indicated at that time that his mother had passed away while he was on his way to see her. He stayed to attend her funeral and returned to Canada (GD3-17 to GD3-19).

[12] On August 18, 2010, the Commission advised the Claimant that he was disentitled to benefits for the period that he was not in Canada and sent him a notice of debt (GD3-14 and GD3-21). The Claimant confirmed that the decision was communicated to him on August 21, 2010 (GD3-16). He confirmed the same at the hearing and testified that he was receiving notices of debt but that he completely forgot to address them and was hoping that his debt would be 'offset' by monies owed to him from his annual tax returns.

[13] The Claimant testified that he did not contact the Commission until April of 2014 after calling the Canada Revenue Agency (CRA) regarding a statement of account he received from the Commission in March 2014 (GD3-20). He was advised by the CRA that he can appeal the Commission's decision. The Claimant testified that his intent was to just pay the debt owed to the Commission.

[14] On April 8, 2014, the Claimant requested that the Commission reconsider its decision communicated to him on August 21, 2010 and provided reasons for his absence from Canada for the said period (GD3-15 and GD3-16).

[15] On July 16, 2014, the Claimant confirmed to the Commission that he was aware of the debt owed as early as August 21, 2010. According to the Commission, he had enquired about the debt on November 18, 2010. He also stated to the Commission that he delayed in requesting a reconsideration of its decision because he had started a new job in August 2010 and was too busy. He forgot about the issue until the CRA contacted him regarding repayment of the debt in April 2014 (G3-22).

[16] On July 16, 2014, the Commission advised the Claimant that his request for a reconsideration of its August 18, 2010 was received beyond the 30-day legislated time period to submit such a request. It further advised the Claimant that it considered his explanation for the

delay and determined that it did not meet the requirements of the *Reconsideration Request Regulations*. The Commission denied the Claimant's request to extend the 30-day period to make a request for reconsideration of its decision (GD3-23).

[17] In his notice of hearing and at the hearing, the Claimant reiterated his reasons for not requesting a reconsideration of the August 21, 2010 decision. He testified that he was upset with both his mother's (June 2009) and brother-in-law's (October 2009) deaths and that he had to go to support his sister in Pakistan (November 2009). The Member noted to the Claimant that these events were several months prior to the Commission rendering its decision. He stated that when he received the decision in August 2010 he had just started a new job where he was not earning a salary (he was on commission only) and that for the following 4 years he was desperately working hard to support his family. He testified that he was in financial trouble, he lost track of time and forgot to appeal. He stated that he was too busy and absolutely had no time.

[18] Regarding his absence from Canada, the Claimant reiterated the purpose of his trip noting that the circumstances were out of his control, that he returned as soon as possible and that he did not misuse the system.

## **SUBMISSIONS**

[19] The Claimant submitted that:

- a) he was aware of the Commission's August 18, 2010 decision however, because he was experiencing financial hardship and working hard, he was too busy, lost track of time and forgot to request a reconsideration of the decision;
- b) the purpose of his trip outside Canada was out of his control, that he attended his mother's funeral and return as soon as possible.

[20] The Respondent submitted that:

- a) the Claimant was aware of its August 18, 2010 decision and has been in receipt of statements of debt; his explanation that he had forgotten about the debt until the CRA sought repayment arrangements and that he was too busy to request a

reconsideration earlier, is not a reasonable explanation and does not constitute special circumstances to extend the appeal period;

- b) there is no evidence on file of the Claimant making contact with the Commission to seek resolution to the debt; the Claimant therefore has not established a continuing intention to resolve this matter;
- c) it is not satisfied that the request for reconsideration has a reasonable chance of success, and that no prejudice would be caused by allowing a longer period to make the request;
- d) it exercised its discretion under section 112 of the Act in a judicial manner when it denied the Claimant's request to extend the 30-day reconsideration period.

## ANALYSIS

[21] According to section 112 of the EI Act, a claimant, employer or other person may request that the Commission reconsider its initial decision and it must do so within 30 days of that decision being communicated to that person.

[22] Section 1 of the *Reconsideration Request Regulations* sets out the requirements that must be met in order to obtain an extension of time to seek a reconsideration under paragraph 112(1)(b) of the EI Act.

[23] In this case, since the Claimant submitted his request for reconsideration more than 365 days after the August 18, 2010 decision was rendered and communicated to him, the Commission may allow a longer period to make a request for reconsideration of that decision if it is satisfied of that all 4 factors in section 1 of the *Reconsideration Request Regulations* are met. That is, the Commission must be satisfied that:

- (a) there is a reasonable explanation for requesting the longer period and,
- (b) the Claimant has demonstrated a continuing intention to request a reconsideration and,
- (c) the request for reconsideration has a reasonable chance of success and,

(d) no prejudice would be caused to the Commission or other parties by allowing the longer period to make the request.

[24] The Member notes that the Commission's initial decision regarding the Claimant's absence from Canada is not the issue before the Tribunal. Rather, the Member must decide whether the Claimant's request to extend the 30-day period for reconsideration of the Commission's August 18, 2010 decision, should be granted.

[25] The Member considered case law regarding former provisions relating to extension of time to appeal to the Board of Referees (section 114 of the EI Act as it read prior to April 1, 2013). It held that the Commission's power to extend the deadline within which to appeal its decision was (a) discretionary and (b) its decision to allow or refuse an extension could only be reversed if it exercised its discretion in a non-judicial manner (Knowler A-445-93; Chartier A-42-90; Plourde A-80-90).

[26] Similarly, the Member notes that paragraph 112(1)(b) of the EI Act and section 1 of the *Reconsideration Request Regulations* stipulate that the Commission may allow a longer period to make a request for reconsideration of a decision. This wording is similar to that which was found previous in section 114 of the EI Act. The Member therefore finds that a decision by the Commission pursuant to the *Reconsideration Request Regulations* is a discretionary one.

[27] In this case therefore, the Member must decide whether the Commission exercised its discretion in a judicial manner when it denied the Claimant's request to extend the 30- day period for reconsideration of its initial decision. In other words, the Member must decide whether the Commission acted in good faith, proper purpose and motive and took into account any relevant factors, ignored any irrelevant factors and acted in a non- discriminating manner (Sirois, A-600-95, Knowler A-445-93; Chartier, A-42-90; Dunham A-708-95; Purcell A-694-94).

[28] In this case, the Member finds no reason to intervene with the Commission's decision for the reasons that follow.

[29] Firstly, the Commission considered all 4 factors in the *Reconsideration Request Regulation*. It submits that the Claimant confirmed receipt of the Commission's decision dated

August 18, 2010 and that he was subsequently in receipt of statements of debt. The Claimant submitted that he had forgotten about the debt until the CRA sought repayment in April 2014, and that he was too busy to request a reconsideration decision any earlier. The Commission concluded that the Claimant did not provide a reasonable explanation nor did his reasons constitute special circumstances in order to extend the reconsideration period. Further, the Commission considered that there is no evidence on file of the Claimant contacting the Commission to seek resolution to the debt. It therefore concluded that the Claimant did not establish a continuing intention to resolve this matter. Finally, the Commission indicated that it is not satisfied that the request for reconsideration has a reasonable chance of success, and that no prejudice would be caused by allowing a longer period to make the request. Accordingly, the Commission submitted that it considered all the pertinent circumstances thus exercising its discretion judicially. Also, it submitted since the Claimant did not meet the factors in subsection 1(1) of the *Reconsideration Request Regulations*, it had to deny the Claimant's request for an extension of the 30-day reconsideration period. The Member notes that the Commission considered, but did not provide an explanation as to why it was not satisfied that the factors stipulated in subsection 1(2) of the *Reconsideration Request Regulations* were not met. The Member finds however, that the way in which section 1 of the *Reconsideration Request Regulations* is worded, the Commission must be satisfied that all of the factors therein are met before granting the extension. Since it was not satisfied that the factors in subsection 1(1) were not met, it could (and did) deny the request on that basis alone.

[30] Secondly, the Claimant did not provide any new evidence at the hearing that was not already before the Commission when it made its decision to deny an extension to the 30-day period. No other reasons for the delay were provided to the Member and no extenuating or special circumstances were identified. The Claimant confirmed that he did not contact the Commission during the almost 4 year delay. He testified that indeed, he did not contact the Commission regarding the statements of debts because his intention was to just pay off his debt. He did not contest the decision until he was advised of his right to do so by a CRA agent in April 2014. The Claimant provided the same reasons for his absence from Canada as he did to the Commission on March 31, 2010. These reasons were considered when the Commission made its original decision of August 18, 2010 and, when it determined that the Claimant's request for reconsideration had no reasonable chance of success.



[31] The Member therefore finds that the Commission acted in good faith, considered all the relevant factors and did not consider irrelevant factors when it denied the Claimant's request to extend the 30-day period for reconsideration of its August 18, 2010 decision pursuant to sections 112 of the EI Act and section 1 of the *Reconsideration Request Regulations*. The Member finds that the Commission exercised its discretion in a judicial manner and therefore, cannot alter this decision.

## **CONCLUSION**

[32] The appeal is dismissed.

Eleni Palantzas  
Member, General Division

DATED: December 5, 2014