Citation: *J. A. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 5

Appeal #: GE-14-3296

BETWEEN:

J. A.

Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

SOCIAL SECURITY TRIBUNAL MEMBER:	Joseph Wamback
HEARING DATE:	December 9, 2014
TYPE OF HEARING:	Videoconference
DECISION:	Appeal is dismissed.

PERSONS IN ATTENDANCE

J. A., the Appellant.

DECISION

[1] The Member finds that the Canada Employment Insurance Commission (Respondent) properly exercised its discretion under section 112 of the *Employment Insurance Act* (EI Act) in a judicial manner when it denied the Appellant's request to extend the 30 day reconsideration period**.** The Appellant's appeal is denied.

INTRODUCTION

[2] On July 2, 2014, the Appellant applied for reconsideration of an Employment Insurance decision. The date of the decision the Appellant requested the reconsideration for was June 22, 1982. The Respondent advised the Appellant on August 15, 2014 that her request for reconsideration was more than 30 days from the date that the decision was communicated to her and that the explanation provided with respect to the delay does not meet the requirements of the *Reconsideration Request Regulations* (the Reconsideration Regulations).

[3] The Appellant appealed that decision to the Tribunal on August 22, 2014.

FORM OF HEARING

[4] After reviewing the evidence and submissions of the parties to the appeal the Member decided to hold a video conference hearing for reasons provided in the Notice of Hearing dated October 16, 2014.

ISSUE

[5] The Appellant is appealing the Respondent's decision to deny the Appellant's request to extend the 30 day period to make a request for reconsideration of a decision under section 112 of the EI Act and section 1 of the Reconsideration Regulations.

THE LAW

[6] Section 112 of the EI Act states:

> (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).

[7] Reconsideration Regulations

> (1) For the purposes of paragraph 112(1)(b) of the EI Act and subject to subsection (2), 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.
>
> (2) 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.

[8] These Regulations come into force on April 1, 2013.

EVIDENCE

[9] The Appellant filed for reconsideration of an Employment Insurance decision that was made by a Board of Referees on June 22, 1982. The Appellant's initial application for benefits was filed on March 5, 1982 which was denied by the Respondent and the Appellant appealed the decision to a Board of Referees which denied her appeal on June 22, 1982. The Appellant advised the Tribunal that the decision was an Umpire's decision but did not provide any documentation or evidence to demonstrate that assertion.

[10] The Appellant advised the Tribunal that her appeal is not about money, she feels she was mistreated in 1982, because she is a woman.

[11] The Appellant advised the Tribunal that the Board of Referees in 1982 made her feel stupid. She stated that in 1980 she had a child, but she did not apply for benefits because someone told her she could not get benefits. She finally applied for benefits on March 5, 1982 and was also seeking an antedate, which was denied by the Respondent. She appealed this decision to a Board of Referees and they denied her appeal on June 22, 1982. She requested the reconsideration on July 2, 2014 and appealed that decision because her husband is ill and she was going through all her old paper work and discovered an old cheque to pay back her pension when she gave birth to her child in 1980. She also stated that she found the old appeal docket dated June 22, 1982 and it bothered her that the decision would not allow her to antedate her claim.

[12] The Appellant advised the Tribunal that it continued to bother her over the years but she did not make any attempt to contact Service Canada throughout the entire period of the delay.

SUBMISSIONS

[13] The Appellant submitted that:

a) Medical issues at the time prevented her from appealing the Umpire's decision in 1982 within the specified time constraints. Her traumatic brain injury caused by a violent assault during her pregnancy affected her and for several years after that. She was compensated by victim services several years after her assault and she was suffering from post-traumatic shock.

b) Women are entitled to maternity benefits and she could not apply because of her circumstances. She was unable to quit her employment as she needed to support her family. The Appellant submits that in 1980 she had a child, but she did not apply for benefits because someone told her she could not get benefits. She finally applied for benefits on March 5, 1982 and was also seeking an antedate, which was denied by the Respondent. She appealed this decision to a Board of Referees that denied her appeal on June 22, 1982.

[14] The Respondent submitted that:

a) Paper and electronic files are retained before disposal for two years after the last administrative action in order to meet the requirements of the *Access to Information Act*, and the *Privacy Act*. However, the Employment Insurance program has an extended period of retention to satisfy the reconsideration period allowed by the EI Act. The general rule of retention for the purpose of the EI program is 11 years. After 6 years, they are purged of information received from Canada Revenue Agency. Basic claim information is retained on separate tapes for an additional 5 years at which point it is destroyed.

b) In the case at hand the Respondent is unable to include any documents, such as an application for benefits, record of employment or copies of any earlier decision letters that may have been sent to the Appellant as these records are no longer available.

c) An Appellant or other person who is the subject of a decision of the Respondent, or the employer of the Appellant, may make a request to the Respondent for a reconsideration of that decision at any time within 30 days after the day on which a decision of the Respondent is communicated to them.

d) The Respondent may allow a longer period to make a request for reconsideration if the Respondent is satisfied that there is a reasonable explanation for the request for a longer period and that the person has demonstrated a continuing intention to request reconsideration.

e) In circumstances where the delay exceeds 365 days; or the request was made after a subsequent application for benefits was filed; or after the Respondent was asked to rescind or amend the decision based on new facts; the Respondent must also be satisfied that the request for reconsideration has a reasonable chance of success, and that no prejudice would be caused to the Respondent or other persons by allowing a longer period to make the request.

f) In this case, the Appellant admittedly was aware of the Commission's decision that she states was made sometime in the year 1982 however, she delayed until July 2, 2014 more than 30 years later to submit a request for reconsideration. Although the Appellant states that medical issues factored into the reason for the delay, she also states she was teaching until she retired in the year 1999 and then continued to supply teach and she has not shown the she was prevented in any way from appealing or requesting reconsideration earlier. The Respondent concluded that the Appellant has not provided a reasonable explanation for the lengthy delay not has she demonstrated a continuing intention to request reconsideration.

g) They are not satisfied the request has a reasonable chance of success and prejudice would be caused to the Respondent by allowing a longer period specifically, as there are no longer any records available going back to the years 1980-1982 when the Appellant claims to have applied for benefits and was subject to a decision of the Respondent.

h) It has exercised its discretion under section 112 of the EI Act in a judicial manner in denying the Appellant's request to extend the 30 day reconsideration period

ANALYSIS

[15] The issue before the Tribunal is the review of the Respondent's decision to deny the Appellant's request to extend the 30 day period to make a request for reconsideration of a decision under section 112 of the EI Act and section 1 of the Reconsideration Regulations.

[16] The *Reconsideration Regulations* state;

1) for the purposes of paragraph 112(1)(b) of the EI Act and subject to subsection (2), 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.

2) 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.

[17] The Tribunal finds that the request for reconsideration was in fact filed late. More specifically there is no case law yet confirming that the type of extension in question is discretionary. However, the language in section 112 of the EI Act is very similar to the

language that was found in section 114 of the EI Act when the Respondent decided on extensions of time to appeal to the Board of Referees, and case law confirms that those decisions were discretionary, so it hold that the decisions under section 112 would also be discretionary.

[18] The Appellant requested reconsideration of an Employment Insurance decision on July 2, 2014. The decision she wishes to have reconsidered was made on July 22, 1982. A Claimant is expected to pursue the appeal as diligently as could reasonably be expected of him or her. (Grewal 85-A-55). The Appellant advised the Tribunal that she was prevented from appealing the June 22, 1982 decision due to medical problems and subsequent post-traumatic stress symptoms but did not submit any supportive medical documentation. The Appellant stated that she suffered from medical issues and psychological trauma before and after the decision on June 22, 1982 and she never made any attempt to contact Service Canada until she was going through old boxes of files in 2014 and discovered a copy of the appeal decision. She stated that it continued to bother her over the years but did not contact service Canada throughout the entire period of time and did not think of appealing the decision in 1982 because she just put it away and went on with her life. The Tribunal finds that the Respondent considered that no evidence was submitted to suggest that the Appellant made any continuing attempts to communicate with the Respondent or pursue her appeal or any evidence of mitigating circumstances beyond the initial delay to explain the reasons for the late appeal.

[19] In this case, the Tribunal does not find any evidence of the Appellant's reasonable explanation for the delay.

[20] The Tribunal finds that the case has no reasonable chance of success. The Appellant did not provide a copy of the decision for which she wishes to seek reconsideration. Additionally, from the evidence she provided at the hearing (as outlined in the evidence section), she appears to be seeking a reconsideration of an Umpire decision. If that is in fact the case, this is not a matter for which the Respondent could reconsider (as the Respondent would have been functus officio) so the reconsideration would not have had a reasonable chance of success. The facts and evidence are no longer available for review and the

Appellant has not provided any submissions to support her appeal of the original decision in 1982. The Respondent has confirmed that it does not retain any records, copies of letters or any other documentation beyond 11 years from the decision date. The Tribunal finds the complete lack of any evidence or documentation available to the Tribunal for consideration is a major consideration for the ability of the appeal to succeed. The Appellant advised the Tribunal that she is not concerned about the benefits but only wishes to demonstrate that she was treated unfairly in 1982 which cannot be considered.

REASONABLE EXPLANATION FOR THE DELAY

[21] The facts show that the Claimant dated her appeal to the Tribunal approximately 32 years after the Employment Insurance decision on June 22, 1982. The Appellant advised the Tribunal that she suffered from physical and emotional problems at the time of the Employment Insurance decision on June 22, 1982, but confirmed that she put it away and went on with her life. She stated that she never contacted the Respondent throughout the entire duration of the delay until she was reviewing old files in the summer of 2014 and that was when she decided to appeal the decision. The Tribunal finds that in this case the Appellant failed to exercise proper diligence in pursuing her appeal from the Employment Insurance decision within the time limits established and made no attempts for approximately 32 years to seek reconsideration and appeal.

NO PREJUDICE

[22] The Respondent submitted that Paper and electronic files are retained before disposal for two years after the last administrative action in order to meet the requirements of the *Access to Information Act,* and the *Privacy Act.* However, the Employment Insurance program has an extended period of retention to satisfy the reconsideration period allowed by the EI Act. The general rule of retention for the purpose of the EI program is 11 years. After 6 years, they are purged of information received from Canada Revenue Agency. Basic claim information is retained on separate tapes for an additional 5 years at which point it is destroyed. In this case there is an exceptional delay of approximately 32 years from the date of the Employment Insurance decision and the request for reconsideration submitted by the

Appellant. The extension of time would be prejudicial to the Respondent and the administration of the EI Act due to length of the delay and complete lack of any evidence, documentation, records available.

CONCLUSION

[23] The Federal Court of Appeal has confirmed the principle that discretionary decisions of the Respondent should not be disturbed unless the Respondent failed to exercise its discretion in a judicial manner. In the same decision the Court defined "in a judicial manner," as acting in good faith, having regard to all the relevant factors and ignoring any irrelevant factors. Canada (AG) v. Sirois, A-600-95: Canada (AG) v. Chartier, A-42-90

[24] The Tribunal is not entitled to substitute its opinion for that of the Respondent. It may only interfere with the Respondent's refusal to allow a late appeal where it appears that the Respondent has exercised its discretion in a "non-judicial" manner, that is, on the basis of irrelevant considerations or without taking relevant considerations into account (A-649-86 C.E.I.C., [1987] F.C.J. No. 1118 (F.C.A.); Canada (A.G.) A-80-90, [1990] F.C.J. No. 944 (F.C.A.); A-42-90 C.E.I.C., 1990] F.C.J. No. 832 (F.C.A.).

[25] The Tribunal finds that the evidence presented by the Appellant does not provide any mitigating circumstances for consideration that would explain a delay of approximately 32 years

[26] The Tribunal finds the Appellant's evidence that she "did not think of appealing the decision in 1982 because she just put it away and went on with her life" clearly demonstrates that she had no intention of pursuing the decision dated June 22, 1982. In the present case, the Tribunal finds that the evidence presented by the Appellant does not provide any mitigating circumstances for consideration that would explain a delay of approximately 32 years. The Tribunal finds that the Appellant has not provided any new information, and the Respondent considered all relevant information and factors and did not consider any irrelevant factors and therefore the Tribunal cannot intervene.

[27] Tribunal finds the Respondent acted judicially and exercised proper discretion in its decision and the request for reconsideration must be denied.

[28] The Appellant provided no additional submissions or facts to be considered by the Tribunal in her appeal documentation or the hearing. There is no additional evidence documenting any compelling explanations for her delayed request for reconsideration and appeal to the Tribunal.

[29] The appeal is dismissed.

Joseph Wamback
Member, General Division

Dated: January 13, 2015