



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *C. D. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 28

Tribunal File Number: GE-15-2799

BETWEEN:

C. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Jean-Philippe Payment

DATE OF HEARING: February 17, 2016

DATE OF DECISION: February 19, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The claimant was not present at the hearing.

INTRODUCTION

[1] The Appellant made a claim for employment insurance benefits on August 3, 2011 (Exhibit GD3-11). On February 1, 2012 and October 5, 2012, the Canada Employment Insurance Commission (the “Commission”) notified the claimant of its intention not to pay employment insurance benefits to the claimant as of July 31, 2011 because she had left voluntarily (Exhibit GD3-14 and 20). It was not until May 27, 2015 that the claimant asked the Commission to reconsider its initial decision (Exhibit GD3-16). On June 17, 2015, the Commission refused that request (Exhibit GD3-18) because the claimant had filed her request after the expiration of the prescribed time under section 1 of the *Reconsideration Request Regulations*.

[2] The Appellant appealed that decision to the Tribunal on September 3, 2015, which was after the time prescribed in section 52 of the *Department of Employment and Social Development Act* (Exhibits GD2). Proceeding by way of interlocutory decision after asking the claimant to provide observations, the Tribunal made an interlocutory decision extending the claimant’s time to appeal to November 16, 2015. According to information from Canada Post placed in the claimant’s file, the latter allegedly received the documentation related to her appeal, the interlocutory decision to appeal to the Tribunal being in her favour and her notice of appeal for February 17, 2016 on November 20, 2015. Unfortunately, the claimant did not appear at the hearing on the scheduled date.

[3] Under subsection 12(1) of the *Social Security Tribunal Regulations*, the Tribunal is satisfied that the claimant was notified of the scheduled hearing in her case and proceeded with that hearing in her absence. The hearing therefore took place on February 17, 2016 at the time indicated in the notice of hearing provided to the claimant in November 2015.

[4] This appeal was heard by teleconference for the following reasons:

- a) The information in the file, including the need for additional information.

ISSUE

[5] The Tribunal must decide if it will grant the Appellant an extension of the time to file a request for reconsideration of an initial decision by the Commission.

THE LAW

[6] Subsection 12(1) of the *Social Security Tribunal Regulations* stipulate that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing.

[7] Section 1 of the *Reconsideration Request Regulations* states:

(1) For the purposes of paragraph 112(1)(b) of the *Employment Insurance 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] In *Penney v. Canada (Attorney General)* (2009 FCA 354), the Federal Court of Appeal (the “Court”) supported the principle by which the principle of natural justice is not a rule based on a principle of fairness giving authorization to depart from the provisions of the Act. The Court itself affirmed that it is possible to appeal the Commission’s refusing to allow a late appeal to follow its course but only on the ground that the Commission based its decision on irrelevant matters or failed to consider relevant matters.

[9] Since there is no case law related to appeals of requests for reconsideration of the Commission’s decision, the Tribunal relies on the decision in *Canada (Attorney General) v. Knowler* (A-445-95), which gives the Commission a discretionary power with respect to earlier provisions related to the extension of the period to file an appeal to a board of referees. That case law considers that the Commission’s power to grant a longer period is discretionary in nature and its decision to grant or to refuse additional time cannot be set aside unless the Commission exercised its discretion “non-judicially”, based its decision on irrelevant matters or failed to consider relevant matters.

[10] In *Muckenheim v. Canada (Attorney General)* (2008 FCA 249), the Court states that Commission has an interest in relying on the certainty and finality of the Umpire’s orders, because there must be a certainty and finality to them for the parties.

[11] In *Grewal v. Canada (Attorney general)* (85-A-55), the Court indicated that an appellant is expected to pursue the appeal as diligently as could reasonably be expected of him or her.

EVIDENCE

[12] The following documentary evidence appears in the file:

- a) a claim for benefits dated August 3, 2011 (Exhibit GD3-11);
- b) an initial decision of the Commission dated February 1, 2012 (Exhibit GD3-14);
- c) a request for reconsideration from the claimant, received by the Commission, dated May 27, 2015 (Exhibit GD3-16);

- d) a decision from the Commission with respect to paragraph 112(1)(a) of the Act dated June 22, 2015 (Exhibit GD3-21);
- e) a notice of appeal to the Tribunal dated September 3, 2015 (Exhibit GD2-1);
- f) all of the observations dated by the claimant as requested by the Tribunal (Exhibit GD6-1);
- g) that the claimant received her notice of appeal, the interlocutory decision on the extension of the period to appeal to the Tribunal and her entire file as adduced by the Commission on November 20, 2015 by registered mail (document in the claimant's file).

PARTIES' ARGUMENTS

[13] The Appellant argued as follows:

- a) At the Tremblay unemployment centre in X, the only appeal recourse under the unemployment act, I must inform Canada that my papers were properly completed (Exhibit GD6-1).
- b) I need a reply rather than to receive papers that result in nothing (Exhibit GD6-1).
- c) Everyone received their cheques, but me, nothing (Exhibit GD6-1).
- d) I need a very clear reply if you intend to cancel (Exhibit GD6-1).

[14] The Respondent argued as follows:

- a) It can grant additional time to file a request for reconsideration if the Commission is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated continuing intention to make a request for reconsideration (Exhibit GD4-2).
- b) In circumstances where the delay is more than 365 days, it must also be satisfied that the request for reconsideration has a reasonable chance of success and that authorizing

additional time to make a request would not be prejudicial to the Commission or another party (Exhibit GD4-2).

- c) The claimant had knowledge of the Commission's decision dated February 1, 2012, notice of which was delivered into her hands on October 5, 2012, and she waited until May 27, 2015 to make a request for reconsideration (Exhibit GD4-2).
- d) The claimant did not provide a reasonable explanation to justify the delay and did not demonstrate that she had a continuing intention to make a request because she confirmed having received the notice of decision that was given to her in person, but provided no explanation for her delay in making a request for reconsideration (Exhibit GD4-2).

ANALYSIS

[15] To grant a request for an extension of the period to request a reconsideration under subsection 1(1) of the *Reconsideration Request Regulations* to be granted, the Commission must be satisfied that there is a reasonable explanation to support the request and that the party has demonstrated their continuing intention to request a reconsideration. Further, under subsection 1(2) of these same regulations, the Commission must also be satisfied that the request has a reasonable chance of success and that authorizing a longer period will not cause prejudice to it or another party in the circumstance set out in paragraph 1(2)(a). The Tribunal's responsibility is therefore to assess whether the Commission exercised its discretionary power in a judicial manner.

Reasonable explanation

[16] The claimant explains in her letter of appeal that she went to the Tremblay unemployment centre, her only course of appeal under the unemployment act since she had to inform the federal government that her papers had been properly completed.

[17] The claimant gave an explanation regarding part of the process that she followed to make her request to the Commission or the Tribunal. That explanation does not give a date or schedule and does not explain why it was reasonable, for her, to make her request for reconsideration to the Commission outside the time generally allowed by the Act. For that

reason, the Tribunal is of the opinion that the claimant has not provided a reasonable explanation of her delay in making her request for reconsideration to the Commission.

Continuing intention to pursue the appeal

[18] In *Grewal* (85-A-55), the Court states that an appellant is expected to pursue the appeal as diligently as could reasonably be expected of him or her. By continually failing to respect the deadlines set out in the communications sent to her by the Commission, the claimant demonstrated that she had no intention of pursuing the appeal as diligently as could reasonably be expected of her. The Tribunal further notes that the claimant, even though she was notified almost three (3) months in advance of the date of the hearing of her case, she did not appear and did not indicate to the Tribunal her inability to be present at the telephone hearing. Simply stating that she needs [Translation] “a reply rather than to receive papers that [result] in nothing” (Exhibit GD6-1) is not a satisfactory response in order to determine a continuing intention to pursue an appeal. Thus, the Tribunal finds that the claimant did not have a continuing intention to pursue her appeal, an intention that lasts, one that continues uninterrupted over time.

Reasonable chance of success

[19] In her letter of appeal, the claimant stated [Translation] “everyone has received their cheques, but me, nothing” (Exhibit GD6-1). The Tribunal cannot, in the absence of other facts that might have been provided at the hearing, state that the claimant’s appeal has a reasonable chance of success given the little information it has regarding the claimant’s leaving voluntarily. Moreover, the onus is on the claimant to prove a reasonable chance of success in her case, a relatively simple legal test given the circumstances, but one that the claimant did not attempt to meet.

Prejudice to other parties

[20] Since almost three (3) years passed between the time that the claimant received the initial decision (Exhibits GD3-14 and 20) and her request for reconsideration to the Commission (Exhibit GD3-16), the Tribunal must bring this dispute to an end. Relying on *Muckenheim* (2008 FCA 249), the Tribunal is of the opinion that it must bring the dispute between the two parties to an end to ensure that the decisions at issue are certain and definitive

for the parties. In this regard, since the claimant has not raised any facts that would demonstrate that the Commission based its decision on irrelevant matters or failed to consider relevant matters, the Tribunal relies on *Knowler* (A-445-95) to find that it would cause prejudice to the Commission to see these appeals reconsidered. Simply stating that she [Translation] “need[s] a very clear reply if you intend to cancel” does not demonstrate that extension of the time to appeal to the Commission would not cause prejudice to the parties.

Commission’s discretionary power used judicially

[21] Relying on *Knowler* (A-445-95), the Tribunal rules that the Commission did not use its discretionary power in a non-judicial manner. As for the facts, specifically the different dates submitted by the claimant and the Commission in the file and the claimant’s obvious negligence in properly following the communications she received from the Commission, it is clear that the Commission considered the necessary elements to effectively apply the employment insurance program to the claimant’s file.

In summary

[22] Lastly, the Tribunal has before it only the issue of the extension of the time to make a request for reconsideration under the *Reconsideration Request Regulations*. The Tribunal finds that the claimant’s appeal to make a request for reconsideration was made outside the prescribed time. Relying on *Penney* (2009 FCA 354), the Tribunal concludes that the Commission, by finding that the claimant was late, did not base its decisions on irrelevant matters in its analysis of the benefit period before it and did not fail to consider relevant matters in its analysis of the claimant’s files. Relying on *Knowler* (A-445-95), the Tribunal considers that the Commission exercised its discretionary powers judicially in refusing to grant the claimant’s request for reconsideration in the claimant’s case.

CONCLUSION

[23] The appeal is dismissed.

Jean-Philippe Payment
Member, General Division – Employment Insurance Section