



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. M. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 49

Tribunal File Number: GE-16-3307

BETWEEN:

M. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Bernadette Syverin

HEARD ON: March 2, 2017

DATE OF DECISION: April 12, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, Mister M. M. was present during the hearing.

The Respondent, the Employment Insurance Commission (Commission) was not present.

INTRODUCTION

[1] On January 23, 2016, the Appellant filed for employment insurance benefits.

[2] On February 11, 2016, the Commission advised the Appellant that they were unable to pay him benefits because he had voluntarily left his employment without just cause within the meaning of the *Employment Insurance Act* (Act).

[3] On June 23, 2016, the Appellant filed a request for reconsideration of the Commission's decision rendered on February 11, 2016.

[4] On August 9, 2016, the Commission advised the Appellant that his request for reconsideration was filed more than 30 days from the date that the decision was communicated to him and that the explanation provided with respect to the delay does not meet the requirements of the *Reconsideration Request Regulations* (Regulations)

[5] The Appellant appealed that decision to the Tribunal on August 26, 2016 by completing the form entitled "Application Requesting Leave to Appeal to the Appeal Division", while he should have complete the form entitled "Notice of Appeal-Employment Insurance Form-General Division", despite that error the Tribunal considers the appeal as having been filed before the General Division of the Employment Insurance Section of the Tribunal.

[6] In his initial employment insurance application, the Appellant requested that all verbal communications occur in English and that correspondence be communicated in French. Therefore the hearing was held in English; however the Appellant requested that the Tribunal's decision be communicated in English.

[7] The hearing was held by Teleconference for the following reason: the need to proceed as informally and quickly as possible while complying with the rules of natural justice.

ISSUE

[8] The issue the Tribunal has to decide is whether the Commission acted judicially in denying the Appellant an extension of time to request reconsideration.

EVIDENCE

[9] On January 22, 2016, the Appellant filed for Employment Insurance benefits. (GD3-3 to GD3-10)

[10] On February 11, 2016, the Commission advised the Appellant that they were unable to pay him any EI benefits because he voluntarily quit his job without just cause within the meaning of the Act. (GD3-11)

[11] On June 23, 2013, the Appellant filed a request for reconsideration of the Commission's decision rendered on February 11, 2016. The Appellant's requested stated that the decision was received on March 27, 2016, approximately. The Appellant further stated that he voluntarily left his employment because he had been working for a total of one year and he was still being paid minimum wage plus \$1. He also mentioned that he constantly had to do overtime as the salary was not sufficient to pay his bills. The Appellant also explained that he applied for a reconsideration of the decision after the 30-day deadline because when he spoke to the agent who rendered the initial decision, said agent seemed to imply that the initial decision was final. The Appellant declared that he became very anxious when he received the decision and he had to find solutions to his financial problems. The Appellant claims that it was an agent working at Work British Columbia who helped him determine that a career reorientation was the best solution. However, the Appellant would have to take a 10 month course which is subsidized only if the Appellant is an Employment Insurance recipient. (GD3-13 to GD3-14)

[12] On August 9, 2016, during a conversation with the Commission, the Appellant explained that when he received the decision, he panicked and became very emotional. He

decided not to go through with the reconsideration request until he was persuaded to do so by a representative from Work British Columbia. (GD3-15)

[13] On August 9, 2016, the Appellant was advised that the Commission would not reconsider its decision rendered on February 11, 2016. The Commission stated that a claimant may request a reconsideration of a decision within 30 days after the day on which the decision was communicated to him. However, on the date that the appellant requested the reconsideration, more than 30 days had passed since the decision was communicated to him. The Commission also explained that the Appellant's explanation with respect to the delay in requesting reconsideration was considered; however, that the explanation provided does not meet the requirements of the Regulations. (GD3-17)

[14] On August 26, 2016, the Tribunal received the Appellant's appeal request; however, this document did not explain the reasons for the appeal. Therefore, the Tribunal asked the Appellant to provide the reasons for his appeal.

[15] In an email dated February 13, 2017, the Appellant explained that immediately after receiving the decision rendered on February 11, 2016, he panicked and began concentrating on finding ways of surviving. He then applied for social assistance, but was told that he would have to wait a period of two months before qualifying. Hence he had to find other ways to survive, such as selling his belongings. A huge amount of time was spent in selling his vehicle and researching food banks and soup kitchens which he attended religiously. The additional time was spent finding employment. (GD5-1 to GD5-3)

[16] During the hearing the Appellant reiterated all of the circumstances previously mentioned in the documented file, and he added the following details to said circumstances:

- 1) Even though in exhibit GD3-13 the Appellant mentioned that he received the decision on March 27, 2016, the Appellant explained that when he applied for the reconsideration of the decision he did not have all of his documents in front of him and the time and dates of the events were not clear in his mind. The appellant confirms that the decision was in fact received sometime in February 2016.

- 2) When he received the decision, he was well aware that he had 30 days to apply for reconsideration; however, he immediately became worried about how he was going to survive without any financial support. He further testified that from the date that he received the decision, applying for reconsideration of the decision was not a priority. Between the date that he received the decision, in February 2016 and the date that he applied for reconsideration which was in June 2016, the Appellant declared that he was busy selling his belongings, applying for social assistance, finding soup kitchens where he could eat and searching for jobs.
- 3) The Appellant claims that he did not have the clarity of mind to make applying for reconsideration of the decision a priority at the time as he was in a state of urgency. He suffered from a great deal of exhaustion from his previous employment; he was tired and had to concentrate on finding ways to survive. He further claimed that it wasn't until he was approved for social assistance that he finally started to have a bit of respite. Then he received support from an organization called Work British Columbia where he discovered that to increase his chances of finding employment he would require training. A course was proposed, but said course is only subsidized when the attendee is an employment insurance recipient. It was then that the Appellant became convinced that applying for reconsideration may be worthwhile, so he applied.
- 4) This period was a very difficult one for him and though his health was at stake, he did not consult a doctor.

SUBMISSIONS

[17] The Appellant submitted that he was aware that he had 30 days to request a reconsideration of the decision rendered on February 11, 2016, however, because he was experiencing financial hardship and seeking employment, he was too busy, he was trying to survive and did not have the clarity of mind to make applying for a reconsideration of the decision his top priority.

[18] The Commission submitted that since the Commission has not yet rendered a decision under section 112 of the Act as to whether the initial decision should be rescinded, amended or

upheld, the only issue that the Tribunal has to decide is whether the Commission exercised its discretion judicially under section 112 of the Act and section 1 of the Regulations when it refused to extend the 30-day reconsideration period.

[19] The Commission also stated that the Appellant's right to reconsideration was communicated to him in the decision rendered February 11, 2016; it is from this date that the 30- day period to make a request for reconsideration must start. The Appellant did not submit a reconsideration request until June 23, 2016, about 106 days after the 30-day prescribed period.

[20] Moreover, according to the Commission all the reasons provided by the Appellant in his reconsideration request were taken into account. As a matter of fact, the Commission understood that the Appellant was going through a difficult financial situation and that during the delay period he was making attempts to correct the situation. However, the Commission determined that those reasons do not constitute a reasonable explanation for the delay as the Appellant was not incapacitated to the point of not being able to submit his reconsideration request within the prescribed timeframe.

[21] Additionally, the Appellant admitted that he received the decision and understood that he had 30 days to request reconsideration. However he had no intention of availing himself of the reconsideration recourse until a third party advised him to do so. As such, the Commission determined that the Appellant did not demonstrate the continued intent to seek reconsideration of the decision rendered on February 11, 2016.

[22] The Commission also mentioned that the Appellant's notice of appeal contained ineligible information. The Tribunal requested that the Appellant submit the reasons for his appeal. The Appellant submitted his reasons on February 16, 2017. The Appellant's submission was also forwarded to the Commission. However the Commission did not provide any additional arguments following receipt of said submission.

ANALYSIS

[23] The relevant legislative provisions are reproduced in the Annex to this decision.

[24] The Tribunal notes that the Commission's initial decision regarding the refusal of the Appellant's employment insurance benefits claim is not the issue before the Tribunal. The latter must decide whether the Appellant's request to extend the 30-day period to request a reconsideration of the Commission's decision rendered on February 11, 2016 (initial decision) should be granted.

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

[26] Subsection 1(1) of the Regulations states that for the purposes of paragraph 112(1) (b) of the 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.

[27] In *Daley v. Canada (Attorney General)*, 2017 FC 297 the Court established that the Commission's decisions made pursuant to paragraph 112 (1) (b) of the Act are discretionary decisions.

[28] Case law indicates that a discretionary decision is one that must be exercised judicially or judiciously (*Canada (A.G.) v. Uppal* 2008 FCA 388)

[29] A discretionary power is not exercised "judicially" if it can be established that the decision-maker (in this case the Commission): acted in bad faith, acted for an improper purpose or motive, took into account an irrelevant factor, ignored a relevant factor, or acted in a discriminatory manner. (*Purcell* A-694-94).

[30] The Tribunal can only intervene if it determines that the Commission did not exercise its discretion judicially.

[31] In its review of the file, the Tribunal found no evidence that the Commission acted in bad faith or acted with an improper purpose or motive when it made its determination to deny

the late reconsideration request. Therefore, the Tribunal determines that the Commission exercised its discretionary power judicially as it will be demonstrated below.

Reasonable explanation of the delay

[32] The Commission advised the Appellant of his right to request reconsideration within 30 days of notification of the initial decision rendered on February 11, 2016. The evidence confirms that the Appellant made his request for reconsideration outside of the 30 day time frame, as the request for reconsideration was only received on June 23, 2016, approximately 106 days from the date that the initial decision was rendered (February 11, 2016) . The Tribunal determines that the Commission thoroughly reviewed the Appellant's file and correctly determined that his request for reconsideration was made outside of the required timeframe.

[33] Additionally, the Tribunal finds that the Commission did not take into account any irrelevant factors when making its determination. During the assessment of the reconsideration request, the Commission notes that in his request for reconsideration presented on June 23, 2016, the Appellant declared that his reason for applying more than 30 days after the prescribed delay was because when he spoke to the agent who rendered the initial decision, said agent seemed to imply that the initial decision was final. Furthermore, upon receiving the decision rendered on February 11, 2016, the Appellant declared that he was very anxious after receiving the decision and he had to find solutions to his financial problems. The Commission claims to understand that the Appellant was going through a difficult financial times and that he was trying to make a better life, however he was well aware that he had 30 days to request for reconsideration, and the reasons to explain the delay do not meet the requirements of the Regulations.

[34] The Tribunal determines that the Commission's analysis indicates that it took the Appellant's explanation into consideration but did not consider it to be reasonable in light of the information provided in the initial denial letter, dated February 11, 2016, which advised the Appellant that he had 30 days to request a reconsideration of the decision.

[35] During the hearing before this Tribunal, the Appellant reiterated the same reasons that were previously provided to the Commission, by stating that finding solutions to his financial

difficulties prevented him from applying within the prescribed timeframe, but the Appellant provided more details to the Tribunal than he did to the Commission.

[36] As a matter of fact, the Appellant confirmed that he received the decision dated February 11, 2016 and was well aware that he had 30 days to request a reconsideration of said decision. During his testimony the Appellant provided details on how he was preoccupied from the time he received the decision dated February 11, 2016, more particularly: he had to sell some of his belongings, and he had to apply for social assistance benefits. After applying for social benefits he was told that he had to wait two months before any benefits could be paid, therefore for a period a two months he had to sign up on a daily basis to ensure a meal at a variety of soup kitchens.

[37] According to the Appellant, his daily schedule was filled with activities which did not provide him with any additional time to apply for reconsideration the decision rendered on February 11, 2016. The Appellant testified that his daily schedule from 8:00am till 4:30pm consisted of lining up at the soup kitchens to ensure a meal, to seeking employment. Additionally, the Appellant was very exhausted from the work that he performed during his previous employment, so he was very tired, and his perception was clouded during that period. Lastly given the urgency of the moment, the Appellant did not have the time or the capacity to submit a request for reconsideration within the prescribed delay.

[38] During the hearing, the Tribunal questioned the Appellant on how he did not perceive applying for a reconsideration of the decision as a way of relieving his financial burdens. The Appellant responded that throughout the delay period he did not have the “clarity of mind” to explain to the Commission the reasons he voluntarily left his previous employment. He was not in a state of health for a few months and did not have the energy to contest the decision.

[39] When questioned about his health, the Appellant specified that he does not have a medical certificate to state that he was medically incapacitated, however, the accumulated exhaustion from his previous employment, and the fact that he had no choice but to frequent soup kitchens to get a meal, and the fact that he almost lost his apartment had an impact on his mental health. He further mentioned that it was not until he started to receive social assistance benefits that he began to feel less exhaustion. This was due to the fact that the income that he

was receiving from social assistance benefits helped to lessen his financial burdens; it was then that he began to realize the options that were available to him.

[40] To resume, the Appellant stated he was suffering from financial stresses that impaired his decision making and ability to cope. As a matter of fact, the Appellant states that throughout the delay period his focus was on doing what he had to do in order to survive and requesting a reconsideration of the decision rendered on February 11, 2016 was not a priority.

[41] It appears from the documentary evidence, that the Appellant did not provide as many details to the Commission as he did to the Tribunal. In essence, even with all of those details provided, the Appellant's explanation to justify the delay is primarily due to him having to find solutions to his financial burdens throughout the delay period. These reasons were considered when the Commission made its original decision of August 9, 2016.

[42] The Tribunal determines that there is no additional evidence documenting any compelling explanations for the delayed request for reconsideration and appeal to the Tribunal. The Tribunal finds that the Appellant's explanation for his delay in filing a request for reconsideration, being that he was working through his financial difficulties, was already evaluated by the Commission; however the latter did not consider the explanation provided by the Appellant to be sufficient grounds to exercise its discretion in his favor.

Continued intent to request the reconsideration

[43] It is also incumbent on the Appellant to demonstrate a continuing intention to request reconsideration.

[44] Regarding the Appellant's continuing intention to request reconsideration, the Commission considered the fact that the Appellant confirmed in writing that he did not request reconsideration until he was told to do so by a third party.

[45] The Appellant testified that he was aware that he had 30 days to request a reconsideration of the decision but he did not have the available time to do so. The Appellant did not contest the decision until he was advised by a third party from Work British Columbia in June 2016, that to meet the requirements to be subsidized for a course that would help him

toward his career aspirations, he has to be an employment insurance recipient. The Appellant testified that it was at that time that he applied for reconsideration with all his earnestness. In fact, from the time he met with his Work British Columbia agent, it took the Appellant a total of two days to submit his request for reconsideration.

[46] Given the above, the Tribunal does not find any factors that were ignored by the Commission or that the latter failed to consider when assessing the Appellant's request for additional time to apply for reconsideration.

CONCLUSION

[47] Tribunal considers that in this case, the Commission exercised its discretionary authority judicially when it refused to grant the Appellant an extension of the deadline for filing his reconsideration request. The Tribunal believes that the Commission, in reaching its decision, took account of all of the relevant factors and disregarded those of no relevance.

[48] The appeal is dismissed.

Bernadette Syverin
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

Reconsideration — Commission

112 (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.

Reconsideration

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

Regulations

(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).

Reconsideration Request Regulations General circumstances

1 (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.

Particular circumstances

(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.