



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. P. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 57

Tribunal File Number: GE-16-3845

BETWEEN:

H. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: March 7, 2017

DATE OF DECISION: April 25, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

H. P., Appellant

INTRODUCTION

[1] The Appellant applied for regular employment insurance benefits (EI) under the *Employment Insurance Act* (EI Act). The Respondent determined that the Appellant had voluntarily left her employment without just cause and therefore she was disqualified from receiving EI. She was advised of this decision by letter dated January 20, 2016 (decision letter).

[2] The Appellant requested a reconsideration of that initial decision on June 9, 2016 which was beyond the 30-day period prescribed by paragraph 112(1)(a) of the EI Act.

[3] The Respondent refused to allow further time to request a reconsideration.

[4] The Appellant has appealed the Respondent's refusal to grant additional time to request a reconsideration, which is the matter presently before the Tribunal.

[5] The Tribunal decided to hear the appeal by way of teleconference hearing after considering the following:

- a) the complexity of the issue under appeal;
- b) the fact that the Appellant was likely to be the only party in attendance; and
- c) the *Social Security Tribunal Regulations* to proceed as informally and quickly as permitted by the circumstances and the considerations of fairness and natural justice.

ISSUES

[6] The issues before the Tribunal are:

- a) when the Respondent's initial decision was communicated to the Appellant; and

- b) whether the Respondent exercised its discretion judicially in making its decision to deny the Appellant's request for additional time to request a reconsideration of its initial decision, as set out in the decision letter.

EVIDENCE

[7] The Respondent's notes at GD3-13 indicate that the Respondent's agent advised the Appellant of its decision to disqualify her from receiving benefits and informed her of her right to request a reconsideration during a telephone conversation on January 12, 2016. The notes specifically state:

You will receive a letter in the next 30 days indicating [that you will be denied benefits]. Once you receive that letter you can exercise your right to to [sic] reconsideration.

...

The request for reconsideration must be submitted within 30 days of the notice of decision.

[8] The decision letter is found at GD3-14. It states, in bold, that the Appellant has 30 days following the date of the letter or when she was verbally notified of the decision, whichever occurred earlier, to make a formal request for reconsideration.

[9] On the Appellant's Request of Reconsideration Form dated May 31, 2016 and date stamped received by Service Canada on June 9, 2016, she indicated that the decision was verbally communicated to her on January 15, 2016.

[10] During the hearing, the Appellant indicated that she could not recall when she received the decision letter but she thought it was sent by regular mail.

[11] The Appellant indicated that she is appealing the decision to deny her an extension of time to request a reconsideration because it was recommended that she appeal by one of the Respondent's agents. Further, she does not feel that the Respondent had enough information before they made their decision.

[12] The Appellant indicated that when she sat down to write out what lead up to her leaving her employment she started to realize that there were underlying things going on that she could not see at the time. She requested the reconsideration so that the Respondent could hear the whole story. She did not feel that the Respondent fully understood why she was required to leave her employment.

[13] The Appellant explained that she thinks that her employer was playing mind games and she felt that the only option she had was to leave when she did. She stated that her health was more important.

[14] The Appellant explained that she was required to work more night shifts than she was supposed to and was scheduled for Sunday mornings despite being permitted to have Sunday mornings off to attend church.

[15] The Appellant indicated that the many telephone calls from the Respondent's agent had her stressed out at the time. The agent made her feel like her employer was correct, that she was giving wrong information and that he was twisting her information. She stated that the agent was frustrated that he could not get in touch with anyone at the employer's store. She indicated that the agent felt she did not do enough before quitting but she stated that she tried everything she could to work it out.

[16] The Appellant indicated that her employer did nothing to try to keep her and she tried to have meetings to rectify the issues.

[17] The Appellant indicated that her stress level at work and then afterwards with the EI agent gave her little hope.

[18] The Appellant stated that she did not request a reconsideration right away because she was disgusted with the decision, she did not feel that she had any right to do anything and it was a waste of time. The Appellant indicated that it took months for her husband and friends to get it through her head that she should request a reconsideration and she did.

[19] At GD3-20 the Respondent's agent wrote on September 20, 2016 that she considered the Appellant's reasons for delay set out in her request for reconsideration on June 9, 2016 and

during a telephone conversation with the Appellant on that same day, with the same agent. In her request for reconsideration, the Appellant states that her request for reconsideration was late because she spoke to a few people about the decision and she felt that the reason she left her employer was not clearly communicated. The notes from the September 20, 2016 telephone conversation indicate that the Appellant thought the decision was final and that if God meant for her to get EI benefits it would have been approved. Therefore, she thought there was no use requesting the reconsideration; however, after talking to her husband and several other people, she decided to request a reconsideration.

[20] The Respondent states that in determining whether the Appellant had a reasonable explanation for the delay and whether she demonstrated a continuing intention to request a reconsideration they considered the following:

- a) the Appellant was not prevented from submitting a request for reconsideration;
- b) the Appellant confirmed she was aware of the decision in January 2016 but chose not to request a reconsideration because she believed it would not make a difference; and
- c) the Appellant was notified both in writing and verbally that she had 30 days to submit a request for reconsideration if she did not agree with the decision.

[21] Given these factors, the Respondent concluded that it would have been reasonable for the Appellant to submit a request for reconsideration within the required period of time.

SUBMISSIONS

[22] The Appellant submitted that she was unable to request a reconsideration within the time period because she was disgusted with the decision, because of her stress level and she felt it was hopeless.

[23] The Respondent submitted that in the Appellant's circumstances, a longer period of time to request a reconsideration can be given only if the Respondent is satisfied that:

- a) there is a reasonable explanation for the request for a longer period; and

b) the person has demonstrated a continuing intention to request reconsideration.

[24] The Respondent determined that the Appellant did not meet these criteria.

[25] The Respondent submitted that in considering whether the Appellant demonstrated a continuing intention to request a reconsideration they considered the following:

a) the Appellant stated that she only decided to submit a request after speaking with a few people and her husband; and

b) there is no evidence that she enquired about the decision.

[26] The Respondent submitted that it considered all the pertinent circumstances when it denied the Appellant's request for additional time for a reconsideration.

ANALYSIS

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

[28] The evidence is that the initial decision was communicated to the Appellant no later than the end of January 2016. The telephone conversation wherein she was advised of the decision was on January 12, 2016, the Appellant states in her Request for Reconsideration that she was advised on January 15, 2016 and the decision letter was dated January 20, 2016.

[29] Pursuant to paragraph 112(1)(a) of the EI Act, the Appellant had 30 days after the initial decision was communicated to her to request a reconsideration. Therefore, the Appellant had until no later than March 1, 2016 to request a reconsideration.

[30] The Appellant requested a reconsideration on June 9, 2016, beyond the 30-day period.

[31] Pursuant to paragraph 112(1)(b) and subsection 112(3) of the EI Act and subsection 1(1) of the *Reconsideration Request Regulations*, the Respondent has discretion to allow further time to request a reconsideration (*Daley v. Canada (A.G.)*, 2017 FC 297) if satisfied that:

a) there is a reasonable explanation for requesting a longer period; and

b) the person has demonstrated a continuing intention to request a reconsideration.

[32] The Respondent denied the Appellant's request for a longer period to make a request for reconsideration.

[33] The Federal Court of Appeal in *Canada (A.G.) v. Purcell*, A-694-94, found that a discretionary power is not exercised judicially if it is established that the decision maker:

- a) acted in bad faith;
- b) acted for an improper purpose or motive;
- c) took into account an irrelevant factor;
- d) ignored a relevant factor; *or*
- e) acted in a discriminatory manner.

Bad faith, improper purpose or motive and discriminatory manner

[34] The Appellant has not alleged that the Respondent acted in bad faith, for an improper purpose or motive or acted in a discriminatory manner in relation to the decision to deny her request for additional time to request a reconsideration.

[35] The Appellant has indicated that she felt very stressed about the calls from the Respondent's agent and that he made her feel that her employer was correct, and twisted her information. This is evidence with respect to the initial decision that was made and not the decision relating to the additional time to request a reconsideration.

[36] In reviewing the evidence the Tribunal has not noted the appearance of any evidence that would suggest that the Respondent treated the file or rendered a decision in bad faith, for an improper purpose or motive or in a discriminatory manner.

[37] Therefore, the Tribunal finds, on the evidence before it, that the Appellant has failed to establish on a balance of probabilities that the Respondent did not act judicially with respect to these factors.

Relevant and irrelevant factors

[38] In her appeal, the Appellant indicated that:

- a) She was stressed out around the time she left her job, both from the issues she was having at work and the calls from the Respondent's agent, and she was disgusted about the decision to deny her benefits;
- b) She did not feel that it was worthwhile to request a reconsideration at first, but after coaxing and persuasion from others, and after she wrote down what happened, she decided to request a reconsideration. This took her from late January 2016 to early June 2016 (when it was filed).
- c) She also felt that the Respondent did not have all of the facts when it made its initial decision.

[39] The Appellant states that she was delayed in requesting a reconsideration because of the stress around the time she received the initial decision as well as her disgust with the initial decision. While the Tribunal agrees that this was a stressful time for the Appellant and the initial decision would not have been to her liking, the Tribunal finds that Appellant's stress and disgust, without more, are not relevant factors to be considered when determining whether more time should be granted to request a reconsideration decision. Without more, stress and disgust cannot be considered to be relevant factors because it could be said that most appellants are stressed and disgusted or disappointed when they receive an unfavourable initial decision. It is noted that the Respondent did not consider these irrelevant factors in making its decision.

[40] The Tribunal finds that the Respondent considered that the Appellant did not feel that it was worthwhile to appeal the decision until coaxed by others. The Respondent's consideration of this factor is clearly set out in the evidence on record and the Respondent's written submissions. The Tribunal finds that this is a relevant factor as it goes to whether the Appellant had a continuing intention to appeal.

[41] The Tribunal finds that the Appellant's submission that the Respondent did not have all the facts when it made its initial decision is not a relevant factor to be considered when

determining whether additional time should be allowed to request a reconsideration. The pertinent issue is whether the Appellant had a reasonable explanation for the delay and a continuing intention to request a reconsideration. Whether or not the Respondent had all of the evidence when it made its initial decision is not relevant to these two questions.

[42] The Respondent properly considered the test set out in subsection 1(1) of the *Reconsideration Request Regulations* and decided that the Appellant did not have a reasonable explanation for the delay in her request and did not demonstrate a continuing intention to request a reconsideration. It considered that:

- a) the Appellant was notified of the time limit both in writing and verbally;
- b) that she only decided to submit a request after speaking with a few people and her husband; and
- c) that there is no evidence that she enquired about the decision.

[43] On the evidence before it, the Tribunal finds that the factors considered by the Respondent are relevant to the issue and that the Respondent did not consider any irrelevant factors. These factors directly relate to the reasonableness of the delay and her continuing intention to request a reconsideration.

CONCLUSION

[44] On the totality of the evidence before it, the Tribunal is satisfied on a balance of probabilities that the Respondent exercised its discretion judicially in making its decision to deny the Appellant's request for additional time to request a reconsideration of its initial decision.

[45] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

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.

(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).

Reconsideration Request Regulations

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.

(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*.

2 These Regulations come into force on April 1, 2013.