



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *T. R. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 92

Tribunal File Number: GE-16-4467

BETWEEN:

**T. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Paul Dusome

HEARD ON: May 12, 2017

DATE OF DECISION: June 22, 2017

## **REASONS AND DECISION**

**PERSONS IN ATTENDANCE:** the Appellant.

### **INTRODUCTION**

[1] The Appellant filed a request for reconsideration on October 12, 2016, respecting a decision of the Respondent made on October 26, 2015. The Respondent declined to extend the time for filing the request by letter dated November 1, 2016. The Appellant filed his appeal to the Tribunal on November 28, 2016.

[2] The hearing was held by Teleconference for the following reasons:

- a) The fact that the credibility may be a prevailing issue.
- b) The information in the file, including the need for additional information.
- c) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

### **ISSUES**

[3] The issue in this appeal is whether the Commission was correct to refuse to extend the time for a reconsideration of the October 26, 2015 decision. The appeal will not decide if the October 26, 2015 decision itself was correct.

### **EVIDENCE**

[4] The Appellant applied for regular benefits on October 19, 2013, and received benefits. On March 27, 2015, the Respondent sent a request for payroll information to a different employer asking if the Appellant had worked for or received earnings in the first three weeks of December 2013. The employer answered “yes”, and showed earnings of \$210.00, \$96.00, and zero for those three weeks, plus vacation pay of \$26.31 paid in July 2014. The employer noted as additional information, “No reason given for quitting.”

[5] The Respondent wrote to the Appellant on August 18, 2015, setting out the above earnings figures, stating that the Appellant had declared \$0 for those periods, and asking for information on whether he had voluntarily resigned as stated by the employer. The Appellant completed and returned the “Clarification of Information” form enclosed with that letter. He agreed that the information obtained from the employer was correct. He stated that he was under the impression that could receive 25% of his weekly benefit while working part-time and on EI. It was an honest misunderstanding. He did not address the issue of having quit in his response.

[6] As a result of the above information from the employer and the Appellant, the Respondent sent its decision letter of October 26, 2015 to the Appellant. The Respondent dealt with three issues in that letter. Firstly, it concluded that the Appellant had voluntarily left employment without just cause, so that he was not entitled to EI benefits starting December 15, 2013. Secondly, the Respondent allocated the undeclared earnings from the employer, so that the Appellant had to pay back benefits he should not have received. Thirdly, the Respondent concluded that the Appellant had knowingly made false representations, and assessed a penalty of \$346.00. The Appellant subsequently received a Notice of Debt for \$5,808.00.

[7] The Appellant filed his request for reconsideration on October 12, 2016, disagreeing with the conclusion that he had quit his job, and contesting that he owed money. As the grounds for the late filing, the Appellant stated that he was not aware of his options to appeal or of the 30 day reconsideration period. He also noted that this was his first EI claim, and he did not realize the procedure of appealing due to lack of knowledge and experience with the system.

[8] The Respondent spoke to the Appellant on November 1, 2016. When asked about the nearly one year delay, the Appellant answered that he received the letters, and an agent called him about the issue, but he was confused about the process. He was living in X, it was summer and he was really busy with work and “kind of ignored it for awhile”. He said he did come to the office once and got a paper to fill out but he never submitted it. He said that the length of time did not change the issue, so he felt the reconsideration should be looked into. The agent told him that he was notified of the time frames on several occasions and he had a duty to reply in a timely fashion.

[9] The Respondent's Record of Decision, dated November 1, 2016, sets out its rationale in reaching the decision not to grant an extension of time for the reconsideration:

Information was requested from the client via mail on July 22 2015 and August 18 2015 without response.

October 26 2015 a letter was sent advising of all decisions rendered on the claim. The letter was clear in that an overpayment was being established.

The client requested a reconsideration of this decision on October 12 2016— a delay of 322 days which is in excess of the 30 day time frame limitation provided for in the Act.

Subsection 112 of the Act states that reconsideration may be requested at such further time as the Commission may in any particular case for special reasons allow.

The client indicates that he did not request reconsideration immediately upon being informed of the decision because he didn't understand the system and initially ignored the issue. He therefore requests that his late request for reconsideration be allowed.

In consideration of the above reasons, the client has not shown special reasons for the delay because there is no indication that he was prevented in any way — by circumstances beyond her/his control — from requesting a reconsideration in a timely manner nor is there any evidence of any other circumstances that may have caused the delay.

The Commission has considered all evidence relevant to the request and has not considered any evidence not relevant to the request; and concludes that there are no special reasons warranting acceptance of the delayed request. Therefore, the delayed request is denied.

[10] The Respondent wrote to the Appellant on November 1, 2016 that his explanation for the delay in filing the request for reconsideration did not meet the requirements of the Regulations, so it would not be reconsidering its decision. The Appellant then filed his appeal on November 28, 2016. The grounds for the appeal focus largely on the decision to find that he had quit his job. That issue cannot be decided by the Tribunal in this appeal, as the only issue in this appeal is that of an extension of time for filing the request for reconsideration. The grounds for appeal do set out the Appellant's reasons for the delay in filing the request for reconsideration as well: lack of knowledge, stress from unsuccessful job searches and financial problems, and emotional hardships.

[11] The Appellant provided affirmed testimony at the hearing. He did receive the October 26, 2015 letter at about that time. He said that he did not read the part of the letter that stated

the right to request reconsideration and the 30 day time limit. He did read the earlier part of the letter and saw that he had to pay back money. He stated that he did not receive a notice of debt letter until later, in 2016. He remained at the same address in X-X until he moved away to his parents' home in September 2016.

[12] The Appellant did recall speaking with the Respondent at some point before he asked for the reconsideration. He could not recall when that was, but he was told to get a form to fill out and submit. The Appellant did get the form, but did not fill it out or submit it at that time. He stated that the length of time taken to file the request for reconsideration did not change the issue at hand, and he felt the reconsideration should be looked into. The Respondent at one point told the Appellant he had six months to submit the form. No one from the Respondent explained the process, or the severity of the decision, or that his bank account might be garnished, as it has been.

[13] When asked why he did not file his request for reconsideration within 30 days of receiving the October 26, 2015 decision letter, the Appellant stated that he had had a rough year starting in the fall of 2015. He was suffering from depression. He had broken up with his girlfriend. He was struggling financially, and had no money. All his job search efforts turned up negative. He confirmed that he had no medical evidence to support the existence of or treatment for depression.

[14] It was not until he moved in September 2016 that he spoke with his parents, took charge of the problem, and filed his request for reconsideration. He testified that he first wanted to contest the October 2015 decision when he moved back to his parents' home in September 2016.

## **SUBMISSIONS**

[15] The Appellant submitted that due to his personal situation from October 2015 to September 2016, and the incorrectness of the finding that he quit, the extension should be allowed.

[16] The Respondent submitted that given the length of the delay, the Appellant's obtaining a form to make a request for reconsideration but not submitting it, his own statement that he "kind of ignored it for a while", there were no extenuating circumstances in this case to warrant

granting an extension. The Representations of the Respondent did expressly refer to the two factors in subsection 1(1) of the *Reconsideration Regulations* (the Regulations). The Representations also referred to there being no extenuating circumstances preventing the Appellant from submitting an earlier request for reconsideration, and to the Appellant not having shown special circumstances.

## **ANALYSIS**

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

[18] The authority conferred on the Respondent to allow a further period of time after the 30 day time limit to request a reconsideration, is discretionary (*Daley v. Canada (A.G.)*, 2017 FC 297). As a discretionary decision, it can only be varied if the Respondent did not exercise its power judicially (*Canada (A.G.) v. Knowler*, A-445-05). A discretionary power is not exercised judicially if it can be shown that the decision maker: 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 (*Canada (A.G.) v. Purcell*, [1996] 1 FCR 644).

[19] The Appellant had to meet the two factors under subsection 1(1) of the Regulations. There is no evidence that the facts of this case fall under any of the paragraphs of subsection 1(2) of the Regulations. Based on the language of subsection 1(1) of the Regulations, which require the Respondent to be satisfied that there is a reasonable explanation for the delay, and a continuing intention to seek reconsideration, the onus was on the Appellant to prove on a balance of probabilities that he satisfied both of those factors. The Tribunal must look at the information available to the Respondent at the time of its decision, and determine if the Respondent judicially exercised its power to deny the extension of time for the reconsideration request.

[20] The Tribunal notes that the Respondent has referred to “special reasons” in the course of its Record of Decision, and in its Representations. That phrase does not appear in section 112 of the *Employment Insurance Act* (EI Act), or in subsections 1(1) or (2) of the Regulations. The Regulations, and section 112 of the EI Act came into effect before the events in this appeal. They are the law applicable to this appeal. The phrase “special reasons” did appear in the predecessor to section 112 of the EI Act, but has been dropped from section 112 and does not

appear in the Regulations. In its Representations, the Respondent relied on the authority of “CUB 68224 confirmed by *Penney v. Canada (AG)*, 2009 FCA 354”. That authority does not assist the Respondent, as that authority is based on the predecessor section to 112 of the EI Act, which did contain the phrase “special reasons”. The removal of that phrase from section 112 of the EI Act, and its absence from section 1 of the Regulations makes that authority, which relies on the phrase “special reasons”, inapplicable to the present appeal. The Respondent has used the wrong test in arriving at its decision, placing an additional requirement of “special reasons” when such are not required by the current legislation. This is clear from the last two paragraphs of the Record of Decision, which cite “special reasons” as the justification for denying the request to extend time. That is a serious error. In addition, the Record of Decision is silent with respect to the factor of a continuing intention to request a reconsideration, in subsection 1(1) of the Regulations. The Respondent has failed to apply part of the proper test as set out in the Regulations. That too is a serious error. The former error constitutes taking into account an irrelevant factor, within the *Purcell* case. The latter error constitutes failing to take into account a relevant factor, within the *Purcell* case. As a result, the Respondent exercised its discretion in an unjudicial manner, in its decision to deny an extension of time to request a reconsideration. The Respondent’s Representations do refer to the two factors in subsection 1(1) of the Regulations, but repeat the wrong test by referring to “special circumstances” and by relying on the *Penney* case in support of its decision. Application of the wrong test leads to the decision being set aside and referred back to the Umpire for a decision (*Canada (A.G.) v. Imran*, 2008 FCA 17).

[21] The Tribunal does not have the authority to refer a matter back to the Commission for a new decision; its authority is confined to dismissing the appeal, rescinding or varying a decision of the Respondent in whole or in part, or giving the decision the Respondent should have given (*Department of Employment and Social Development Act*, subsection 54(1)). As the Tribunal cannot refer the matter back to the Respondent for it to apply the correct test and reach a new decision, and as this is an appeal de novo, the Tribunal will review the evidence before it in light of the correct test, then determine whether the Respondent’s decision of November 1, 2016 should be rescinded or varied, or some other decision should be substituted, or the appeal should be dismissed.

[22] The correct test is set out in paragraph 112(1)(b) of the EI Act and subsections 1(1) and (2) of the Regulations. Subsection 1(2) of the Regulations is not applicable in this case. Paragraph 112(1)(b) is quite open ended, simply referring to “any further time that the Commission may allow.” Pursuant to subsection 112(3), the Regulations confine the Respondent’s discretion to, in this case, the two factors set out in subsection 1(1) of the Regulations: “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.” The Appellant is not required to show “special reasons” or any other matter over and above a reasonable explanation and a continuing intention as set out in subsection 1(1).

[23] Applying the correct test, the Appellant failed to satisfy the Respondent about the factor of a reasonable explanation for requesting a longer period for the following reasons. Legal principles that are implicit in the Respondent’s decision include: persons claiming EI benefits have an obligation to seek out and obtain information about their rights and obligations under the legislation; and failure to do so does not constitute a reasonable explanation for delay. The Appellant’s lack of knowledge about the process is not a reasonable explanation. He should have read the October 26, 2015 letter fully, and made prompt inquiries of the Respondent about his rights, so that he could have filed his request for reconsideration in time, as the Respondent noted in its conversation with the Appellant on November 1, 2016. This failure to inquire initially was compounded later when the Appellant spoke to the Respondent, and obtained a request for reconsideration form, but did not fill it in or file it. The Appellant had also stated to the Respondent that he had ignored the October 26, 2015 letter for a while.

[24] In his notice of appeal to the Tribunal, the Appellant raised for the first time other matters not put before the Respondent earlier. His reference to depression, in the absence of medical confirmation that the condition existed and interfered with his normal functioning, including the ability to seek reconsideration, does not establish a reasonable explanation. The references to stress, financial and emotional hardship and negative job searches do not constitute a reasonable explanation. This evidence was very generic, and did not relate how these conditions impacted the Appellant’s ability to deal with the EI issues. The Appellant continued to look for work during this period. That is consistent with an ability to seek



information about his EI rights and obligations, and with an ability to file a reconsideration request.

[25] Applying the correct test, the Appellant failed to satisfy the Respondent about the factor of a continuing intention to seek reconsideration for the following reasons. “Continuing intention to seek reconsideration” requires that the Appellant have that intention throughout the period from the time of receiving the decision of October 26, 2015, up to the filing of the request for reconsideration on October 12, 2016. On his own evidence, and from the conversation with the Respondent on November 1, 2016, the Appellant did not completely read the decision letter of October 26, 2015, and was unaware of the 30 day reconsideration period. He stated the he “kind of ignored it for a while”. He obtained a reconsideration form later on, but did not fill it out or submit it at that time. The Appellant testified that he first wanted to seek reconsideration when he moved back to his parents’ home in September 2016. That evidence confirms that there was not a continuing intention to appeal.

[26] In the result, the decision to deny the extension of time to file a request for reconsideration was the correct decision, once the correct test is applied to all the evidence before the Tribunal. The Appellant did not meet the onus of satisfying either of the two factors in subsection 1(1) of the Regulations.

## **CONCLUSION**

[27] The appeal is dismissed.

Paul Dusome  
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 Regulations*

**1(1)** For the purposes of subsection 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 other persons 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.

*Department of Employment and Social Development Act*

**54 (1)** The General Division may dismiss the appeal or confirm, rescind or vary a decision of the Minister or the Commission in whole or in part or give the decision that the Minister or the Commission should have given.