



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *V. D. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 114

Tribunal File Number: GE-17-235

BETWEEN:

**V. D.**

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: Teresa Jaenen

HEARD ON: July 14, 2017

DATE OF DECISION: July 17, 2017

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

Ms. V. D., the Appellant attended the in person hearing.

Mr. Luis Gabat, Interpreter attended by video.

### **INTRODUCTION**

[1] On November 29, 2015 the Appellant established a claim for employment insurance benefits. On April 21, 2016 the Canada Employment Insurance Commission (Commission) imposed a disqualification effective March 20, 2016 as it determined the Appellant voluntarily left her employment. On November 24, 2016 the Appellant made a request for reconsideration. On December 14, 2016 the Commission maintained its original decision. On January 10, 2017 the Appellant filed an appeal of that decision to the *Social Security Tribunal of Canada* (Tribunal).

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

- a) The information in the file, including the need for additional information.
- b) The fact that an interpreter will be present.
- 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.

### **ISSUE**

[3] The Tribunal must decide whether the request to extend the 30 day period to make a request for reconsideration of a decision under section 112 of the *Employment Insurance Act* (the Act) and subsection 1 of the *Reconsideration Request Regulations* (Regulations) should be allowed.

## **EVIDENCE**

[4] On November 29, 2015 the Appellant established a claim for employment insurance benefits.

[5] On April 21, 2016 the Commission notified the Appellant that she was disqualified from receiving benefits starting March 20, 2016 because it was determined she voluntarily left her employment. She was advised if she disagreed with the decision she could make a formal request for reconsideration within 30 days (GD3-9 to GD3-10).

[6] On November 7, 2016 the Appellant made a renewal claim for employment insurance benefits (GD3-11 to GD3-17).

[7] On November 24, 2017 the Appellant made a request for reconsideration stating that it was an honest mistake that led her to losing her benefits from her previous employer and she is appealing now because without her hours from her last employer she does not have enough to qualify. She stated she worked 18 years for this employer (GD3-18 to GD3-19).

[8] On December 14, 2016 the Commission contacted the Appellant advising her that he decision of voluntarily leaving and availability was communicated to her on April 21, 2016 verbally and also notified in writing. The Commission asked the Appellant why it took until November 24, 2016 to request for reconsideration. The Appellant stated she agrees with the voluntary leaving decision and it was an honest mistake on her part. However she did not make a request for reconsideration until she renewed her claim and found out she did not qualify because of the voluntary leaving. She stated she did not think of appealing it at that time (GD3-20).

[9] On December 14, 2016 the Commission determined the Appellant delayed in the request for reconsideration of 188 days and considered the reason she did not think about filing a request for reconsideration at the time because she was working was not a reasonable explanation for the delay. The Commission determined the Appellant had not demonstrated a continued intention to request a reconsideration and she had no intention of doing so until she

was dismissed from her most recent job and realized she did not have enough hours to meet the relief from disqualification (GD3-21).

[10] On December 14, 2016 the Commission notified the Appellant in writing of the decision and advised her of her right to appeal to the Tribunal (GD3-22).

[11] On January 10, 2017 the Appellant filed an appeal with the Tribunal stating since she had been previously been disqualified for benefits and realizes she now does not have enough hours; she would like to appeal the decision on humanitarian reasons (GD2-1 to GD2-9).

### **EVIDENCE AT THE HEARING**

[12] The Appellant explained that she had health issues with her back but she would try to go back to a housekeeping job and she attended an orientation. However due to her back condition she realized after two days that she would no longer be able to do this type of work because of her back issues and advised the employer. She stated she didn't realize she would be paid for the orientation so was very surprised when she received a check in the mail. She stated she immediately called Service Canada, who then advised her that because she quit this job she would be disqualified from benefits. The Appellant stated that initially she accepted the Commission's decision that she voluntarily left her employment because she was told that was the law.

[13] The Appellant stated she has a medical document dated February 2017; however at the time she voluntarily left her employment due to her back issues she did have any. Her doctor just told her to rest, she was not advised to quit her job.

[14] The Appellant stated that she was continuing to look for other suitable employment and in August 2016 she was successful in finding employment. However in October 2016 she lost that employment as her employer found her unsuitable for the position due to an issue with her hearing. She stated she had accumulated 309 hours; however she would learn that she needed 400 hours to qualify and because of her previous disqualification her hours of working for 18 years with her previous employer would not be included.

[15] The Appellant stated that she understands everything and that she it was her fault and she accepted the voluntary leaving and she knew she had 30 days to make the request; however she looked and found other work. She stated she just wants some consideration and have her previous hours allowed so she can receive benefits.

## **SUBMISSIONS**

[16] The Appellant submitted that:

- a) She initially accepted the voluntary leaving was her fault and she did not make a request for request for reconsideration;
- b) She was no longer able to continue working as a housekeeper due to her back pain. She stated that she was no instructed by a doctor to quit her employment
- c) She only applied for the request for reconsideration after she was dismissed from her most recent employer and didn't have enough hours; therefore she believes that she should be given consideration because she had worked for her former employer for 18 years.

[17] The Respondent submitted that:

- a) The Appellant was aware of the Commission's decision dated April 21, 2016 and she delayed until November 24, 2016 to make a request for reconsideration. The Appellant had not provided a reasonable explanation for her delay, stating she did not think to make a request is not sufficient to allow a seven month delay;
- b) The Appellant has not shown a continued interest in requesting said reconsideration until she made her renewal application and realized she was not payable benefits. There is no evidence to suggest that the Appellant was prevented from making this request earlier than 188 days beyond the 30 day request period. The Appellant knew of the decision in April 2016 as she was verbally advised of the decision. Furthermore, she stated that she agreed with the voluntary leaving decision. The Appellant's ignorance of

the law will not be accepted as a reasonable explanation for the delay to justify an extension of the delay period to make a request for reconsideration;

- c) The Appellant's request for reconsideration has no reasonable chance of success as the original decision complies with the Employment Insurance Act and is supported by case law. Allowing a longer period to make the request would be contrary to the intent of the legislation and prejudicial to the Commission and the Appellant's formal employer as the matter was adjudicated appropriately with the input of both the Appellant and the employer; and
- d) The only issue to be decided by the Tribunal is whether the Commission exercised its discretion under section 112 of the Act in a judicial manner when it denied the Appellant's request to extend the 30 day reconsideration period.

## **ANALYSIS**

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

[19] The Tribunal must decide whether the request to extend the 30 day period to make a request for reconsideration of a decision under section 112 of the Act and subsection 1 of the Reconsideration Regulations is allowed.

[20] In the case of a request for reconsideration the Commission may provide an extension of this time providing that there is a reasonable explanation for the delay, a continued intention for a request for reconsideration has been demonstrated and 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.

[21] Case law applicable to the extension of time to appeal holds that the Commission's power to extend the deadline within which to appeal the Commission's decision is discretionary and its decision to allow or refuse an extension could only be reversed if it exercised its discretion "non-judicially" or if the decision was based on irrelevant considerations or without taking relevant considerations into account (*Chartier A-42-90*).

[22] The Tribunal notes that the Commission's initial decisions regarding whether the Appellant voluntarily left her employment is not the issue before the Tribunal. The only issue before the Tribunal for determination is whether an extension of time for the reconsideration should be granted.

[23] The Respondent presents the argument that the Appellant was aware of the Commission's decision dated April 21, 2016 and she delayed until November 24, 2016 to make a request for reconsideration. The Appellant had not provided a reasonable explanation for her delay, stating she did not think to make a request is not sufficient to allow a seven month delay.

[24] The Appellant testified that she does not dispute the fact that she was aware she could have made a request for reconsideration within 30 days but she did not because she accepted she had made a mistake and she agreed with the decision that she voluntarily left her employment. She stated that she didn't make a request until she realized she did not qualify for a renewal claim and had insufficient hours.

[25] The Tribunal finds there is no dispute that the Appellant delayed in filing her request for reconsideration for 188 days after the initial decision was communicated to her. The Tribunal finds from the Appellant's oral evidence she had no intention to do so until she was dismissed from another employment and had insufficient hours.

[26] The Tribunal finds that the Appellant has failed to provide a reasonable explanation for the delay or that a continued intention for a request for reconsideration has been demonstrated.

[27] The Respondent presents the argument that the Appellant's request for reconsideration has no reasonable chance of success as the original decision complies with the Act and is supported by case law.

[28] The Appellant presents the argument that she was no longer able to continue working as a housekeeper due to her back pain although she was not instructed by a doctor to quit her employment. However she now has a medical note dated in February that she has back problems.

[29] The Tribunal finds from the Appellant's oral evidence that the medical certificate she speaks of now is dated in February 2017 and she testified that she did not have any medical

evidence to provide to the Commission as it related to the voluntary leaving decision dated April 21, 2016. The Tribunal finds the current medical evidence cannot be considered to be extenuating or special circumstances that can support the request for reconsideration has a reasonable chance of success.

[30] The Respondent argues that allowing a longer period to make the request would be contrary to the intent of the legislation and prejudicial to the Commission and the Appellant's formal employer as the matter was adjudicated appropriately with the input of both the Appellant and the employer.

[31] The Appellant's testified that she still agrees that it was her fault and that she accepted the decision of voluntary leaving. The Appellant testified that she did not have any new evidence including medical evidence that she could provide during a request for reconsideration. She testified she wants her 18 years of her employment to be considered.

[32] The Tribunal finds that by allowing the request for reconsideration would be prejudicial to the Commission and the employer as the evidence supports the Appellant agreed with the original decision of voluntary leaving and that the Commission adjudicated appropriately with the input of both the Appellant and the employer.

[33] The Tribunal sympathies with the Appellant's situation and acknowledges she believes her 18 years of working should be considered; however the Tribunal finds that the Commission considered all the relevant factors when it denied the Appellant's request to extend the 30-day period for reconsideration pursuant to sections 112 of the Act and section 1 of the Regulations. The Tribunal finds that the Commission exercised its discretion in a judicial manner and therefore cannot intervene with this decision.

## **CONCLUSION**

[34] The appeal is dismissed.

Teresa Jaenen  
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) 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.