



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *PM v Canada Employment Insurance Commission*, 2017 SSTGDEI 131

Tribunal File Number: GE-17-416

BETWEEN:

**P. M.**

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: Bernadette Syverin

HEARD ON: September 22, 2017

DATE OF DECISION: October 31, 2017

## REASONS AND DECISION

### OVERVIEW

[1] P. M. (Appellant) received parental insurance benefits following a claim for benefits that took effect in January 2010. In a decision dated April 14, 2016, the Canada Employment Insurance Commission (Commission) determined that the Appellant had to pay back \$14,087 because he had failed to declare the income he had earned between March and December 2010, when he was receiving Employment Insurance benefits. The decision indicates that the Appellant had 30 days to request a reconsideration of the decision made on April 14, 2016. The Appellant filed his reconsideration request on December 13, 2016, 213 days after the decision was made.

[2] The *Reconsideration Request Regulations* (Regulations) state that the Commission may allow a longer period to make a reconsideration request if it is satisfied that there is a reasonable explanation for requesting a longer period and if the person has demonstrated a continuing intention to request a reconsideration.

[3] On January 3, 2017, the Commission informed the Appellant that the reconsideration request received on December 13, 2016, was made more than 30 days after the day on which the decision dated April 14, 2016, was communicated to him and that the explanation he had given for the delay did not meet the requirements of the Regulations. The Appellant appealed the decision to the Tribunal.

[4] The Tribunal must decide whether the Commission exercised its discretion judicially when it denied the Appellant's request to extend the 30-day reconsideration period, in accordance with section 112 of the *Employment Insurance Act* (Act) and section 1 of the Regulations.

[5] A teleconference hearing was held because this method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit. The Appellant attended the hearing, but the Commission was not present.

[6] The Tribunal finds that the Commission did not exercise its discretion judicially when it refused to extend the 30-day reconsideration period. As a result, the appeal is allowed, and the reasons for this decision are set out below.

## **EVIDENCE**

[7] The Tribunal has considered all the evidence on file and determines that the following evidence is relevant to the issue.

[8] The Appellant applied for parental benefits on February 5, 2010 (GD3-3 to GD3-11). The Record of Employment filed in support of the claim indicates that the Appellant worked for Canada Safeway Limited until January 22, 2010, and that the Record of Employment was issued because of parental leave (GD3-12). A second Record of Employment issued by the same employer reveals that the Appellant voluntarily left his employment on August 28, 2011 (GD3-13).

[9] In November 2015, the Commission asked the Appellant to fill out a form. On it, he had to confirm the employment income earned between March and December 2010. The form was sent to the Appellant's address at X. In January 2016, the Appellant complied with the request by including proof of his pay stubs detailing the income earned (GD3-21 to 29).

[10] On April 14, 2016, the Commission decided that the Appellant had not declared his employment income from his employer. Accordingly, the Commission determined that the Appellant had made 18 false statements in reports he had submitted to claim benefits. The decision resulted in an overpayment of \$14,087, and a notice of debt was issued on April 16, 2016 (GD3-33). The decision and the notice of debt were sent to the Appellant's address on record: X (GD3-34).

[11] On December 13, 2016, the Appellant requested a reconsideration of the decision, stating that, in recent months, he had received notices of debt for \$14,381.06 but that he was unable to get an explanation as to why he owed that amount, despite many efforts with the Commission. Based on the address indicated in the reconsideration request, the Appellant resides at X (GD3-35).

[12] In January 2016, while discussing the reconsideration request, the Commission informed the Appellant that his reconsideration request was 213 days late; the time limit for making it was 30 days. The Appellant told the Commission that he never received the decision made on April 14, 2016. The Appellant confirmed that his address was X. He also claimed that he did not owe the government money, because he had reported his income to the Canada Revenue Agency. The Commission's notes in the file indicate the following: [translation] "The Claimant was not happy. He was growing impatient and did not want to answer my questions. He said that I was not letting him talk, yet each time, I waited for an answer to my questions. He said that he did not owe the government any money and that he had reported his income to the Canada Revenue Agency. I told him that Employment Insurance was not the Canada Revenue Agency. He replied in an aggressive tone that yes, it was. [...] I explained to him that I was the last resort before the Social Security Tribunal and I asked him to explain to me, again, the reason for his 213-day delay; otherwise, I could not accept his delay. He yelled in English 'Jesus Christ' and hung up." (GD3-37)

[13] On January 3, 2017, the Commission decided that the reasons cited by the Appellant for his late request did not meet the requirements of the Regulations. Consequently, the decision made on April 14, 2016, would not be reconsidered (GD3-39).

[14] GD3-38 contains the detailed reasons for this decision, which are as follows:

[translation]

In this case, the client learned about the Commission's decision dated April 14, 2016, and waited until December 13, 2016—213 days later—to request a reconsideration. The Commission reviewed the reasons given for the delay in Supplemental Information to the Request, dated January 3, 2017. The client has not provided a reasonable explanation for the delay in requesting a reconsideration, nor has he demonstrated a continuing intention to request said reconsideration, because he still lives at the same address and the correspondence was not returned to us. He made no effort to contact us within the time permitted to inquire about his right to reconsideration.

## Testimony at the Hearing

[15] At the hearing, the Appellant testified as follows:

- a) The Appellant explained that around December 2015, he received a document from the Commission asking him to specify the income he had earned in 2010. He complied with the request in January 2016. Soon after, he contacted a Commission agent, who confirmed that the information had been received, that there were no problems, and that a decision would be communicated to him shortly.
- b) He never received the decision made on April 14, 2016; in fact, he did not read the decision until the hearing. However, in April 2016, he received the notice of debt dated April 16, 2016, for \$14,087. This notice of debt simply indicates [translation] “undeclared earnings resulted in an overpayment.” Not knowing why he owed that amount, the Appellant called the Commission agent he had spoken with in January 2016. She told him that she could do nothing about the notice of debt. The Appellant then called the toll-free number on the notice of debt to ask why he owed money, and an agent promised to send him the details of the debt. However, he did not receive any information.
- c) On July 27, 2016, the Appellant sent a letter to the address provided on the notice of debt, asking for information, to no avail.
- d) In November 2016, with the help of an agent working in a Commission office, the Appellant completed an access to information request. In late November 2016, the Appellant received a 300-page document in response to his access to information request; however, the Appellant alleged that the voluminous document did not contain the decision. Nevertheless, the letter he had sent on July 27, 2016, was among the documents received. The Appellant then consulted Internet forums, and in December 2016, he found a link explaining how to request a reconsideration of a decision by the Commission and filed his reconsideration request.

- e) The Appellant testified that, if he had received the decision as the Commission claims, he would not have wasted time taking all the steps he had explained. Moreover, during his conversation with the Commission about his reconsideration request, the agent did not give him the chance to speak. It was a one-way conversation because he kept being interrupted by the agent, who demanded [translation] “the reason why he had waited a year before filing his reconsideration request.” The Appellant ended the call because he could not even get a sentence in. As a result, he did not have the chance to explain to the Commission the reasons for his delay in filing his reconsideration request.
- f) He still did not understand why he had to pay back that amount because he had always reported his income to the Canada Revenue Agency on his tax returns.

### **Post-Hearing Evidence**

[16] In response to a request from the Tribunal, on September 28, 2017, the Appellant provided the notice of debt issued on April 16, 2016, from Employment and Social Development Canada (ESDC). The address on the notice of appeal is 875 Heron Road, 2nd floor, room 276, Ottawa, Ontario, K1A 1A2. The notice of debt indicates that the Appellant had to pay back \$14,087.00. The notice of debt simply states: [translation] “You did not properly declare your income, which resulted in an overpayment” (GD5-5 and GD5-6). In addition, the Appellant introduced into evidence a letter dated July 27, 2016, that he had sent to the address on the notice of debt. In the letter, the Appellant asks ESDC to explain to him the reasons for, and origin of, the debt (GD5-2). The Appellant also produced the letter dated November 22, 2016, that ESDC sent him in response to his access to information request (GD5-3).

### **SUBMISSIONS**

[17] The Appellant is asking the Tribunal to allow his appeal because he never received the decision made on April 14, 2016. He did receive the notice of debt dated April 16, 2016, but this notice of debt did not provide any information as to why the debt had been established. Moreover, if he had received the decision as the Commission claims, he would not have wasted

his time taking all those steps with the Commission to get an explanation as to why he owed money.

[18] The Commission maintains that the decision made on January 3, 2017, complies with the Act and case law. Accordingly, the Commission is asking the Tribunal to dismiss the appeal for the following reasons:

- a) A claimant who is the subject of a decision of the Commission may make a request to the Commission for a reconsideration of that decision at any time within 30 days after the day on which the decision is communicated to them. However, this 30-day time limit can be extended if the applicant shows that they had a reasonable explanation for the delay in filing the reconsideration request and that they had a continuing intention to pursue the reconsideration.
- b) In the Appellant's case, he confirmed that he had not changed addresses but that he had not received the decision made on April 14, 2016. The facts on file show that the Appellant received all the documentation sent to the address on record, which makes it unlikely that he did not get the notice of decision. Thus, the Commission found that the Appellant did not have a good reason for the delay in filing his reconsideration request.
- c) The Federal Court of Appeal has confirmed the principle that one should not interfere with the discretionary decisions of the Commission unless the Commission failed to exercise its discretion judicially. In the same decision, the Court defined "judicially" as acting in good faith, taking all the relevant factors into account and setting aside all irrelevant factors (*Canada (AG) v Sirois*, A-600-95; *Canada (AG) v Chartier*, A-42-90). The Commission submits that it exercised its discretion judicially when it denied the Claimant's request to extend the 30-day reconsideration period, because all the relevant circumstances were considered when the request was denied.

## **ANALYSIS**

[19] The relevant statutory provisions appear in the annex of this decision.

[20] The Tribunal first considers that it does not have to decide the merits of the initial decision, made on April 14, 2016. The only issue before the Tribunal concerns the decision dated January 3, 2017, in which the Commission refused to extend the time for requesting a reconsideration of the decision made on April 14, 2016.

[21] Section 112(1) of the Act reads as follows:

A claimant or other person who is the subject of a decision of the Commission [...] 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.

[22] Was the reconsideration request made outside the 30-day time limit set out in the Act?

[23] In this case, the evidence shows that on April 14, 2016, the Commission made an allocable earnings decision that the income earned by the Appellant constituted earnings received in the benefit periods that had to be allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations*. In the decision, the Commission informs the Appellant of his right to request a reconsideration of the decision within 30 days. The Appellant claims that he never received this decision. After making the decision dated April 14, 2016, the Commission sent the Appellant a notice of debt that stipulated the amount of the overpayment of benefits that arose out of the related allocable earnings decision and requested payment of the stipulated amount. The Appellant admits that he received this notice of debt dated April 16, 2016.

[24] Does the notice of debt constitute a decision duly communicated to the Appellant for the purpose of calculating the 30-day period for requesting a reconsideration under section 112(1) of the Act? In *Braga v Canada (Attorney General)*, 2009 FCA 167, the Federal Court of Appeal indicated that notices of debt are decisions of the Commission that fall within subsection 52(2) of the Act and are therefore appealable to the Tribunal. Thus, the Tribunal determines that the Appellant had the right to challenge the notice of debt from the moment he received it in April 2016.



[25] The Commission indicated that the Appellant did not make his reconsideration request until 213 days after the decision was made. The Commission did inform the Appellant of the decision made on April 14, 2016. While the Appellant argues that he did not receive the decision, he admits that the notice of debt was communicated to him in April 2016. As mentioned, the Tribunal determines that the notice of debt constitutes a decision duly communicated in April 2016, but the Appellant's reconsideration request was not received until December 13, 2016. Therefore, the Tribunal determines that the reconsideration request was filed more than 30 days after the notice of debt was communicated to the Appellant.

[26] For the purposes of section 112(1) of the Act, section 1(1) of the Regulations states that "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 power to grant an extension is discretionary and that its decision to grant or refuse an extension can be overturned only if the Commission exercised its power in a "non-judicial" manner or if the decision is based on irrelevant factors or made without regard to relevant factors. A discretionary power is not exercised "judicially" if it can be established that the decision-maker exhibited one of the following behaviours: acted in bad faith, acted for an improper purpose or motive, took into account an irrelevant factor, ignored a relevant factor, acted in a discriminatory manner (*Canada (Attorney General) v Purcell*, [1996] 1 FC 644).

[28] Consequently, the Tribunal must first determine whether the Commission exercised its discretion judicially when it refused to allow a longer period to make a reconsideration request. If the Tribunal determines that the Commission did not exercise its discretion judicially, the Tribunal can then intervene to give the decision the Commission should have given.

[29] In this case, the Tribunal finds that the Commission did not exercise its discretion judicially when it considered the factors set out in section 1(1) of the Regulations, as shown below.

[30] As mentioned above, to be granted an extension of time to appeal, a claimant must show that they meet both criteria set out in section 1(1) of the Regulations, that is, that there is a reasonable explanation for requesting a longer period, and that the person has demonstrated a continuing intention to request a reconsideration, throughout the entire period of the delay. In this case, the Tribunal determines that the Commission did not properly consider the two factors set out in section 1(1) of the Regulations.

[31] The Commission argues that it exercised its discretion judicially because it [translation] “reviewed the reasons given for the delay in Supplemental Information to the Request, dated January 3, 2017. The client has not provided a reasonable explanation for the delay in requesting a reconsideration, nor has he demonstrated a continuing intention to request said reconsideration, because he still lives at the same address and the correspondence was not returned to us. He made no effort to contact us within the time permitted to inquire about his right to reconsideration” (GD3- 38). In short, the Commission determined that the Appellant had received the decision sent to him on April 14, 2016, because the Appellant had not changed addresses and because the decision was not returned to the Commission. The Commission also determined that the Appellant took no steps to contact the Commission throughout the entire period of the delay.

[32] In its assessment of whether the Appellant had a reasonable explanation for the delay and whether he had demonstrated a continuing intention to pursue his reconsideration request, the Tribunal notes that the Commission did not consider all the efforts made by the Appellant and how long they went on, or the delays caused by the different communications between the Appellant and the Commission.

[33] The Appellant argued that he did not receive the decision dated April 14, 2016, but that he received the notice of debt. A careful review of the notice of debt reveals that it indicates that the Appellant owes \$14,087. It also states: [translation] “You did not properly declare your income, which resulted in an overpayment.”

[34] Moreover, the notice of debt provides a number to call for more information, as well as details on the terms of repayment, how interest on the debt is calculated, and how to make a

payment. However, the notice of debt does not specify the origin of the debt. In light of this, the Appellant got back in touch with a Commission agent in April 2016, and she told him that she could do nothing about the notice of debt. The Appellant then contacted the Commission at the toll-free number shown on the notice of debt and was referred to another agent, who promised to send him all the documents explaining the debt, to no avail. The Appellant nevertheless continued his research by going to the Commission office, where another agent suggested that he make an access to information request. The Appellant received the response to his access to information request in late November 2016. Moreover, the Appellant stepped up his Internet searches, and it was not until December 2016 that he found out how to request a reconsideration. On December 13, 2016, he filed his reconsideration request, stating: “Over the past few months, I have received several notices of assessment from Revenue Canada saying that I owe \$14,381.06. [...] I have never received an explanation as to why I have to repay that amount, despite many efforts I have been making in this regard.” (GD3-35)

[35] In light of all the above, the Tribunal determines that the Commission did not exercise its discretion judicially because it did not consider the many steps taken by the Appellant to get information about the origin of the debt. If it had considered these facts, the Commission would have realized that all the steps taken by the Appellant show that he had a reasonable explanation for filing his reconsideration request on December 13, 2016, and that his relentless efforts to get an explanation as to the reasons for the debt prove his continuing intention to pursue the reconsideration request.

[36] Having found that the Commission did not exercise its discretion judicially, the Tribunal must intervene to give the decision the Commission should have given.

### **Reasonable Explication and Continuing Intention to Pursue the Reconsideration Request**

[37] To this end, the Tribunal considers the many steps taken by the Appellant, including with the phone number provided on the notice of debt; the letter the Appellant sent on July 27, 2016, to the address on the notice of debt (GD5-2); and the access to information request he made on the advice of the Commission.

[38] The Tribunal also considers that some of the delay was due to the fact that the Appellant took many steps to understand the notice of debt but was unable to get an explanation, despite the various calls he made to the Commission, not to mention the fact that the Appellant also went to a Commission office, seeking clarification about the notice of debt. In addition, the Tribunal considers the Appellant's continued confusion as to why the debt was established. The Appellant maintains that he has always reported his income to the Canada Revenue Agency, although the debt was established in the context of a claim for Employment Insurance benefits. The Tribunal also considers the fact that the Appellant waited to receive a copy of his file in response to his access to information request and made his reconsideration request soon after.

[39] In light of all the above, the Tribunal finds that the Appellant provided a reasonable explanation for his delay in requesting a reconsideration. In addition, the evidence shows that immediately after receiving the notice of debt, the Appellant made efforts to find out why he was being asked to repay an overpayment, and those efforts spanned seven months, from April to November 2016. This shows that the Appellant had a continuing intention to pursue the reconsideration request throughout the entire period from mid-April 2016 to December 13, 2016.

## **CONCLUSION**

[40] After considering all the evidence on file, the Tribunal finds that the Commission did not exercise its discretion judicially and that the time for requesting a reconsideration should be extended.

[41] The appeal is allowed.

Bernadette Syverin  
Member, General Division – Employment Insurance Section

**ANNEX**

**APPLICABLE 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***

**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.