



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. P. v Canada Employment Insurance Commission*, 2018 SST 1399

Tribunal File Number: GE-14-2576

BETWEEN:

E. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gary Conrad

DATE OF DECISION: February 6, 2018

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for employment insurance benefits and was later disentitled for non-availability which resulted in an overpayment being assessed. Further to a late request for reconsideration, on June 10, 2014, the Respondent issued a decision under section 112 of the *Employment Insurance Act* (Act) denying additional time to make a request for reconsideration. The Appellant appealed that decision to the Social Security Tribunal (Tribunal) on June 10, 2014.

[2] Under subsection 52(2) of the *Department of Employment and Social Development Act* (DESD Act), in no case may an appeal be brought to the General Division of the Tribunal more than one year after the day on which the Respondent's reconsideration decision was communicated to the Appellant.

[3] The Tribunal must decide whether the appeal was brought in time.

ANALYSIS

[4] The Tribunal finds that the Respondent's denial of the Appellant's request for additional time to request a reconsideration decision was communicated to the Appellant on June 24, 2014, at the latest. The Appellant was informed verbally that his request for additional time for a reconsideration from the Commission was denied on May 9, 2014, as per notes regarding the Commission's discussion with the Appellant on that date; however, in those notes it does not indicate that the Appellant was informed of his right to appeal the decision to the Tribunal and the timeline in which to do so.

[5] On May 28, 2014, the Appellant contacted the Commission and requested written correspondence from the Commission regarding why his reconsideration request was denied and also requested an explanation of the decision.

[6] On June 10, 2014, the Commission spoke with the Appellant and explained the decision to deny additional time to request reconsideration, informed him of his right to

appeal to the Tribunal and informed him that a letter would be sent to him regarding the denial of his reconsideration request.

[7] On June 10, 2014, the Commission sent a letter to the Appellant which stated that they had denied his request for additional time to make a request for reconsideration, the reasons for the denial, and also explained that he could appeal the decision to the Tribunal and the timeline which he had to do so. The letter was sent to the same address that was on the Appellant's request for reconsideration and on the Appellant's Notice of Appeal to the Tribunal.

[8] Also on June 10, 2014, the Appellant filed an incomplete appeal with the Tribunal regarding the garnishment of his wages.

[9] The Tribunal notes that the Commission stated the Appellant requested the June 10, 2014, decision be reprinted and sent to him on September 13, 2017.

[10] In a letter dated September 25, 2017, the Appellant's Representative stated that the Appellant was not aware of the Tribunal, and its ability to help with the Appellant's issue, until the summer of 2017. The Appellant's Representative also stated that there was no initial letter for the Commission's administrative review decision.

[11] In a letter dated October 24, 2017, the Appellant's Representative stated that the Appellant never received an administrative review decision letter and that it stated in the letter written June 10, 2014, that there was a decision communicated to the Appellant on January 6, 2012, but the Appellant has no knowledge of a phone call on the date of January 6, 2012.

[12] The Tribunal finds that there is insufficient evidence to demonstrate that the Appellant did not receive the June 10, 2014, letter from the Commission. The Appellant appealed to the Tribunal on June 10, 2014, which demonstrates to the Tribunal that he was aware of the decision denying him additional time to make a request for reconsideration, that the Tribunal existed, and that appealing to the Tribunal was his next recourse.

[13] The Tribunal also finds that the information from the Appellant's Representative appears to be speaking about a letter regarding the initial decision by the Commission and not the decision to deny the Appellant's request for additional time to make a request for reconsideration. The Appellant's Representative references information in the June 10, 2014, letter regarding the denial of additional time, and explains that it was the decision communicated on January 6, 2012, that the Appellant never received a letter about, which is the initial decision, which is not before the Tribunal, rather than the decision denying additional time to make a request for reconsideration.

[14] The Tribunal also notes that the Appellant called the Commission and requested a letter regarding the denial of additional time to make a request for reconsideration and that letter, dated June 10, 2014, was sent to the same address that was on the Appellant's request for reconsideration and on the Appellant's Notice of Appeal to the Tribunal. Therefore, allowing for 14 days mailing time, which the Tribunal considers reasonable, the Tribunal finds that the Appellant received the June 10, 2014, letter regarding the denial of additional time, his right to appeal to the Tribunal, and the timeline in which to do so, on June 24, 2014, at the latest.

[15] The Tribunal finds that the Appellant brought the appeal to the General Division of the Tribunal on June 10, 2014; however the appeal was incomplete as it was missing the reconsideration decision.

[16] On July 2, 2014, the Tribunal sent a letter to the Appellant informing him that his appeal was incomplete as it was missing a copy of the reconsideration decision being appealed and the date on which the reconsideration decision was communicated to the Appellant.

[17] Over three years later, on September 25, 2017, the Tribunal received a copy of the June 10, 2014, letter regarding the reconsideration decision the Appellant was appealing. On January 17, 2018, the Tribunal received an email from the Appellant which stated that he did not recall when he received a copy of the June 10, 2014, reconsideration decision he was appealing.

[18] As per the Tribunal's *Practice Direction on the Procedure for Completing Incomplete Notices of Appeal*, if the Tribunal receives the missing information requested after 30 days from the date of the letter requesting the missing information, the Tribunal will deem the appeal to have been filed on the date the Tribunal received all the missing information. In the Appellant's case the final piece of missing information was received on January 17, 2018, and the appeal was deemed complete on that date.

[19] The Tribunal notes the submission from the Appellant's Representative in the letter dated September 25, 2017, that the Appellant never received an administrative review decision letter, but relies on its earlier finding that the Appellant did indeed receive the June 10, 2014, letter regarding the denial of his request for additional time to file a reconsideration decision on June 24, 2014, at the latest. The Tribunal also notes that the Appellant requested the June 10, 2014, letter be reprinted and resent to him on September 13, 2017, and there was nothing preventing the Appellant from having that done after receiving the July 2, 2014, letter from the Tribunal, asking for the June 10, 2014, letter if he had misplaced it.

[20] As the Tribunal has found that the June 10, 2014, letter was communicated to the Appellant on June 24, 2014, at the latest, and the Appellant filed a complete appeal with the Tribunal on January 17, 2018, the Tribunal finds that more than one year passed between when the reconsideration decision was communicated to the Appellant and when the appeal was filed.

[21] The Tribunal must apply subsection 52(2) of the DESD Act which clearly states that in no case may an appeal be brought more than one year after the reconsideration decision was communicated to the Appellant.

CONCLUSION

[22] The appeal to the General Division of the Tribunal was not brought in time and therefore will not proceed.

Gary Conrad
Member, General Division - Employment Insurance Section