



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. T. v. Canada Employment Insurance Commission*, 2018 SST 313

Tribunal File Number: GE-17-3238

BETWEEN:

A. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: March 15, 2018

DATE OF DECISION: March 23, 2018

DECISION AND REASONS

OVERVIEW

[1] The Appellant established a benefit period on February 16, 2016 and collected 40 weeks of benefits. The Canada Employment Insurance Commission (Respondent) issued a decision regarding undeclared earnings, penalty and violation on December 1, 2016. The Appellant sent a Request for Reconsideration on September 7, 2017; the Respondent determined the request was made late and refused to allow an extension of time. The Appellant seeks a decision overturning the Respondent's refusal to grant an extension of time for making his reconsideration request. The Tribunal must decide if the Respondent exercised its discretionary power judicially when it refused the Appellant's request for an extension of time.

DECISION

[2] The appeal is dismissed. Having regard to all of the evidence, the Respondent exercised its discretionary power judicially in denying the Appellant's request to extend the 30 day period to make his request for reconsideration.

ISSUES

[3] Issue 1: Was the Appellant's request for reconsideration submitted late?

[4] Issue 2: Did the Respondent properly exercise its discretion in denying the Appellant's request to extend the period to make his request for reconsideration?

ANALYSIS

[5] Subsection 112(1) of the *Employment Insurance Act* (Act) allows that any person who is the subject of a decision of the Respondent may make a request for reconsideration of that decision within 30 days after the decision is communicated to him, or any further time that the Respondent may allow.

[6] The Respondent may allow a longer period to make a request for reconsideration of a decision if they are satisfied there is a reasonable explanation for requesting a longer period and

the person has demonstrated a continuing intention to request a reconsideration, as specified under subsection 1(1) of the *Reconsideration Request Regulations* (RR Regulations).

Issue 1: Was the Appellant's request for reconsideration submitted late?

[7] According to subsection 112(1) of the Act, an Appellant may request that the Respondent reconsider its initial decision within 30 days of that decision being communicated to him. The Tribunal must first consider the question of when the Respondent's decision was communicated to the Appellant.

[8] The Respondent submits there was a decision letter sent by mail to the Appellant on December 1, 2016. The decision letter outlined undeclared earnings during the Appellant's claim that created an overpayment and included a monetary penalty and a notice of violation. The Respondent argues that since this letter was sent by Canada Post and was not returned as undeliverable, the Appellant must have received it. A statement of account was mailed on December 3, 2016 that stated the amount the Appellant owed in repayment plus the penalty amount.

[9] In an interview with the Respondent, the Appellant confirmed that his mailing address in December 2016 matched the one on the decision letter issued by the Respondent at that time. The Appellant also stated that he received a letter from the Respondent that was mailed on May 11, 2016 to the same address. The Appellant stated in the same interview that he received the statement of account that outlined the debt created by the overpayment and penalty amount, which was issued to the same address several days after the decision letter in December 2016.

[10] The Appellant argues that he did not receive the decision letter dated December 1, 2016 and was unaware of the penalty and the violation that had been imposed by the Respondent. The Appellant testified that the Respondent had a telephone conversation with him in December 2016 to inform him that his future benefit payments would be reduced to address the overpayment and penalty. The Appellant further testified that he did not receive the statement of account dated December 3, 2016, in contradiction to his earlier statements to the Respondent.

[11] The Respondent provided telephone logs from the Canada Revenue Agency (CRA) departmental accounts receivable system that indicates the Appellant phoned CRA on February

23, 2017 and stated that he had received his statement of account but advised them that he could not make a payment arrangement because he was unemployed with no other income. CRA confirmed his mailing address with him at that time as the same address on record in December 2016. According to the logs, the Appellant phoned CRA again on August 31, 2017 and agreed to a payment arrangement on his account to start in October 2017. The Appellant testified that he recalls speaking with CRA twice in 2017 but did not remember the dates or the reason that he had contacted the agency.

[12] The term “communicated” is not defined within the Act; however, the courts have interpreted it to require a positive action on the part of the decision-maker to advise a party of the substance and effect of a decision. Communication does not require that the full particulars be given to a party or that a party be made aware of any right of appeal or reconsideration (*R & S Industries Inc. v. Minister of National Revenue*, 2007 FC 469). The burden of proving communication rests with the decision-maker, in this case, the Respondent (*Bartlett v. Canada (Attorney General)*, 2012 FCA 230).

[13] The Respondent submitted that the Appellant was aware of the decision in December 2016, based on the decision letter not being returned to Canada Post and the Appellant’s subsequent contact with CRA to discuss repayment of his debt. The Appellant submitted that he did not receive the decision letter, but that he received a telephone call from the Respondent in December informing him of the overpayment and penalty on his account. The Appellant’s contradictory statements regarding whether he received the statement of account calls his memory of the events into question. As such, the Tribunal favours the Respondent’s evidence that the Appellant did receive the statement of account, which is further supported by him contacting CRA in February 2017 and stating that he had received the statement of account.

[14] The Respondent’s decision included a notice of undeclared earnings, penalty, and violation. There is no evidence that the Appellant was made aware of the violation imposed on him during his telephone conversation with the Respondent in December, and the statement of account does not include information regarding the violation. Even if the Respondent’s telephone conversation and statement of account did not outline the violation imposed as part of the decision, the Appellant was aware of the substance of the decision being undeclared earnings.

The telephone conversation and statement of account also outlined that there was a monetary penalty attached to the overpayment, since the Respondent had determined that it was not the Appellant's first incident of improper reporting during his benefit period. Accordingly, the Appellant was aware at the time of receiving these communications of the effect of the decision, namely that it involved repayment of his debt and carried with it further consequences, such as a monetary penalty.

[15] The Tribunal finds that the Respondent's telephone contact with the Appellant and the Appellant's receipt of the statement of account was sufficient to meet the burden of communicating the substance and effect of the Respondent's decision. The Appellant's contact with CRA in February 2017 demonstrates that he was at least aware of the debt and penalty on his account at that time. If he was unaware of the reason for the debt and penalty, it follows that he would have contacted the Respondent to enquire about the decision at that time.

[16] The Tribunal finds that the Respondent communicated the decision to the Appellant in December 2016 based on their telephone call with the Appellant and the statement of account received by the Appellant. Accordingly, the Appellant's request to reconsider the decision in September 7, 2017 is past the 30 day period to request a reconsideration of a decision, under subsection 112(1) of the Act.

Issue 2: Did the Respondent properly exercise its discretion?

[17] The Tribunal notes the Respondent's decision regarding whether the Appellant had undeclared earnings, including the penalty and violation, are not the issues before it. Rather, the Tribunal must decide whether the Appellant's request to extend the 30-day period for reconsideration of the Respondent's decision should be granted by determining whether the Respondent exercised its discretion judicially in denying the Appellant's request. If the Tribunal finds that the Respondent's discretion was not exercised judicially, then the Tribunal will render the decision the Respondent should have given.

[18] The Respondent's decision whether to allow a longer period of time to make a request for reconsideration is discretionary (*Daley v. Canada (Attorney General)*, 2017 FC 297). Discretionary decisions attract a high level of deference and the Tribunal cannot disturb the

Respondent's decision unless it finds the Respondent failed to exercise its discretion judicially (*Canada (Attorney General) v. Sirois*, A-600-95).

[19] In this case therefore, the Tribunal must decide whether the Respondent exercised its discretion in a judicial manner when it denied the Appellant's request to extend the 30-day period for reconsideration of its decision. In other words, the Tribunal must decide whether the Respondent acted in good faith, with proper purpose and motive, took into account any relevant factors, ignored any irrelevant factors, and acted in a non-discriminating manner (*Canada (Attorney General) v. Sirois*, A-600-95; *Canada (Attorney General) v. Purcell*, A-694-94).

[20] The Appellant made an initial claim for benefits on September 1, 2017 and the Respondent determined he did not have sufficient insurable hours to establish a benefit period due to the increased number of hours required with the violation on his account. The Appellant submitted a request for reconsideration of the Respondent's December 2016 decision on September 7, 2017.

[21] In support of his request, the Appellant submitted to the Respondent that the reasons for his delay in making the request were because he had been laid off from his employment, was in the process of making repayment arrangements with CRA, and was unaware of the process on how to request a reconsideration of the Respondent's decision.

[22] In this case, the Tribunal finds no reason to intervene with the Respondent's decision for the reasons that follow.

[23] Firstly, the Respondent considered the factors enumerated in subsection 1(1) of the RR Regulations. The Respondent considered the Appellant's explanation that he delayed in requesting reconsideration because he did not receive the decision letter and was unaware of the decision and his right to request reconsideration. The Respondent submitted that, even if the Appellant had not received the decision letter by mail, he was aware of the decision at the time he received the statement of account in December 2016 and when he contacted the CRA for repayment in February 2017. The Respondent therefore concluded that the Appellant's claim that he was unaware of the decision did not provide a reasonable explanation, nor did his reason of being unemployed constitute special circumstances in order to extend the reconsideration period.

[24] Further, the Respondent considered the Appellant's explanation that he did not know the procedure to request reconsideration and submits that the Appellant took no actions to contact the Respondent and enquire about the process since he became aware of the decision; it was only after the Appellant failed to establish a new benefit period in September 2017 that the Appellant contacted the Respondent to reconsider the decision. For those reasons, the Respondent concluded that the Appellant did not demonstrate a continuing intention to request reconsideration of the decision.

[25] Secondly, the Appellant did not provide any new evidence at the hearing that was not already before the Respondent when it made the decision to deny an extension to the 30-day period to request reconsideration. No other reasons for the delay were provided to the Tribunal and no extenuating or special circumstances were identified. He reiterated his reasons for wanting to appeal the initial decision; however, the Tribunal notes that the Respondent had considered these reasons when it exercised its discretion and denied the Appellant's request for an extension of time.

[26] The Tribunal finds that the Respondent acted in good faith, considered all the relevant factors and did not consider irrelevant factors when it denied the Appellant's request to extend the 30-day period for reconsideration of the December 1, 2016 decision, under subsection 112(1) of the Act and subsection 1(1) of the RR Regulations. The Tribunal finds the Respondent exercised its discretion in a judicial manner and therefore cannot intervene with this decision.

CONCLUSION

[27] The appeal is dismissed.

Catherine Shaw
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. T., Appellant

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.

Reconsideration

(2) The Commission must reconsider its decision if a request is made under subsection (1).

Regulations

(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.