



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. H. v. Canada Employment Insurance Commission*, 2018 SST 322

Tribunal File Number: GE-17-1235

BETWEEN:

S. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

HEARD ON: February 20, 2018

DATE OF DECISION: March 29, 2018

REASONS AND DECISION

DECISION

[1] The appeal is dismissed. The Tribunal finds that the Canada Employment Insurance Commission (Commission) made its decision using only relevant information and did not ignore important information. Therefore, the Tribunal concludes that the Commission exercised its discretion judicially when it denied the extension of time to request a reconsideration of their decision under section 112 of the *Employment Insurance Act* (EI Act) and section 1 of the *Reconsideration Request Regulations* (Reconsideration Regulations).

OVERVIEW

[2] The claimant was receiving EI benefits when he found employment from February 20 to March 27, 2011. The Commission notified the claimant by letter dated March 28, 2012, that according to their records, the claimant had not reported that he had worked and had earnings. This caused an overpayment, and a penalty and violation were also imposed. The claimant submitted his Request for Reconsideration on January 31, 2017. He explained that he was outside of Canada for more than four years. The Commission determined that the Request for Reconsideration was delayed 1740 days and this was outside the 30-day time limit. The Commission refused to reconsider their decision because the claimant had not provided them with a reasonable explanation for requesting a longer period. The claimant appealed to the Social Security Tribunal (Tribunal) to request an extension of time to have his claim reconsidered by the Commission.

ISSUE

[3] Did the Commission exercise its discretion in a judicial manner in denying the claimant's request to extend the 30-day period to make a Request for Reconsideration?

ANALYSIS

[4] Where the Commission has denied an extension of time to request a reconsideration, the only question before the Tribunal is whether an extension of time for the reconsideration should be granted. The issues of the claimant's overpayment, penalty and violation are not questions

before the Tribunal. The Tribunal can only intervene if it determines that the Commission did not exercise its discretion judicially.

[5] A claimant can request that the Commission reconsider a decision within 30 days after the day on which the decision was communicated to the claimant under section 112 of EI Act. Therefore, the Tribunal must first decide when the decision dated March 28, 2012, was communicated to the claimant.

[6] To grant an extension of time to request a reconsideration under subsection 1(1) of the Reconsideration Regulations, the Commission must be satisfied that all of the following four factors are met before granting the extension:

- a) The claimant must show that there was a reasonable explanation for the delay in making the request; and
- b) He must demonstrate a continuing intention to request the reconsideration;
- c) If the Request for Reconsideration is made more than 365 days after the decision was communicated to the claimant, then the Commission must also be satisfied that no prejudice would be caused to the Commission or other party; and
- d) The Request for Reconsideration has a reasonable chance of success.

[7] The Commission must consider only relevant information and all relevant information (*Chartier v. Canada (Canada Employment and Immigration Commission)*, A-42-90).

When was the Commission's decision communicated to the claimant?

[8] It is the responsibility of the Commission to inform the claimant of decisions about their claim for EI benefits and its effects. The burden of proving that the communication was received by the claimant rests with the Commission (*Bartlett v. Canada (Attorney General)*, 2012 FCA 230).

[9] The Tribunal agrees with the Commission that the decision dated March 28, 2012, was communicated to the claimant on July 16, 2013, if not earlier.

[10] There is some confusion with the timeline because the claimant initially stated that he left Canada for more than four years in September 2013, but in his Notice of Appeal he stated that he

left Canada in November 2012. The Tribunal accepts the claimant's testimony that he returned to Africa twice: leaving in November 2012 for about six months returning in April 2013 and he left again in September 2013 returning in December 2016.

[11] The Commission sent a Request for Clarification of Employment Information dated February 2, 2012; however, the claimant did not respond to this letter until April 15, 2013. He explained the reason for the long delay is that he was outside of Canada and did not receive the letter until he returned. The claimant then contacted the Commission on June 13, 2013, asking for an update. He was contacted by the Commission on July 16, 2013, and informed that he had presented no new facts; therefore, the decision would be maintained and he needed to appeal the decision. From this, the Tribunal concludes that the claimant was aware of the decision on July 16, 2013.

Did the claimant have a reasonable explanation for requesting a longer period?

[12] The Tribunal finds that the Commission acted judicially when they determined that the claimant did not have a reasonable explanation for the delay from July 16, 2013, to January 31, 2017, when his Request for Reconsideration was received.

[13] The claimant stated that he did not request a reconsideration earlier because he moved in June 2012, he went overseas in September 2013 and did not return until December 2016. The Commission asked him why he did not request the reconsideration following his conversation with the Commission in July 2013; he responded that he was busy and did not have time but he has time now. The claimant testified that he returned to Canada in April 2013 and he found a job working the night shift, but he did not have time to submit the request because he was very busy at work.

[14] The Commission determined that the claimant would have had time to take a few moments to complete a form at some point during the years that elapsed. He could have done so while outside of the country via the internet or certainly before leaving Canada.

[15] It is the claimant's responsibility to protect his claim for EI benefits. While the claimant was aware of the decision and his right to appeal, he chose to ignore the decision, the debt and the time limits set out in the EI Act. The Tribunal understands that the claimant was working the

night shift; however, this is not unusual as many people work the night shift. Therefore, the Tribunal finds that the Commission acted judiciously when they found that the claimant's explanation for the delay was not reasonable because he was very busy at work or he was outside of Canada.

Has the claimant demonstrated a continuing intention to request a reconsideration?

[16] A claimant is expected to pursue the appeal as diligently as could reasonably be expected of an individual (*Grewal v. Canada (Attorney general)*, 85-A-55).

[17] The Tribunal finds that the claimant did not act as diligently as could reasonably be expected of a claimant to request a reconsideration of the Commission's decision. The claimant was told of his right to request that the Commission reconsider their decision by a Commission agent in July 2013, but he failed to act on this information until several years later. The claimant contacted the Commission on December 29, 2016, and asked that the decision letters be resent and he submitted the Request for Reconsideration on January 31, 2017. Therefore, the Tribunal finds that the Commission acted judiciously in concluding that, during the period from July 2013 to January 2017, the claimant did not demonstrate a continuing intention to appeal.

Will prejudice be caused to the other parties?

[18] Allowing appeals, absent compelling reasons, long after the expiry of time leads to a lack of certainty and finality for both the Minister and all parties to the process. (*Canada (Minister of Human Resource Development) v. Gattellaro*, 2005 FC 883)

[19] The Tribunal finds the Commission acted judicially when they determined that allowing further time to request a reconsideration of the Commission's decision would cause prejudice to the other party, namely the Commission.

[20] The Tribunal acknowledges that the claimant was in receipt of EI benefits for a claim that was established on May 16, 2010, and he was employed while in receipt of EI benefits in February and March 2011. The Commission stated that prejudice would be caused by allowing a longer period to make the request because payroll and other relevant documents and pertinent

facts would not be available because too much time has passed since the decision. The claimant did not offer any evidence to the contrary.

[21] The time limits imposed by the EI Act and the Reconsideration Regulations are important for fairness to all parties and to the process. If the extension of time was allowed automatically, then the 30-day time limit would become meaningless and fairness of the process would be impacted. The claim was established almost eight years ago, the claimant was working while in receipt of EI benefits seven years ago, and the decision was communicated to the claimant almost five years ago. The Tribunal finds this is a considerable amount of time for the Commission to be expected to provide evidence to prove their case.

Does the claimant's Request for Reconsideration have a reasonable chance of success?

[22] The law requires that all four factors set out in the Reconsideration Regulations be met in order for the claimant to be granted an extension of time to request a reconsideration by the Commission. Since the Commission acted judicially in determining that the claimant has not met the first three factors, the Tribunal finds that the claimant's appeal cannot succeed, and therefore will not consider whether the claimant's Request for Reconsideration has a reasonable chance of success.

CONCLUSION

[23] The Tribunal concludes that the Commission exercised its discretion in a judicial manner because they considered all relevant information and did not consider irrelevant information in denying the claimant's appeal to extend the 30-day period to make a Request for Reconsideration under subsection 112(1) of the EI Act and section 1 of the Reconsideration Regulations. As a result, the Tribunal is unable to alter the Commission's decision.

[24] The appeal is dismissed.

K. Wallocha
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. H., 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.

(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

1 (1) For the purposes of paragraph 112(1)(b) of the EI 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.