



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. H. v. Canada Employment Insurance Commission*, 2018 SST 345

Tribunal File Number: GE-17-2147

BETWEEN:

C. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

TELECONFERENCE ON: March 22, 2018

DATE OF DECISION: April 16, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed. The Tribunal finds that the Canada Employment Insurance Commission (Commission) did not exercise its discretion judicially when it refused to allow an extension of time to request a reconsideration. However, the Tribunal finds that the claimant has not met the factors of section 1 of the *Reconsideration Request Regulations* (Reconsideration Regulations) to allow an extension of time.

OVERVIEW

[2] The claimant reactivated a benefit period for a claim for EI benefits effective December 7, 2015; however, he left Canada on January 11, 2016. The Commission informed the claimant by letter dated January 30, 2016, that he was unable to be paid EI benefits from January 11, 2016, because he was out of Canada for vacation. Upon his return, the claimant applied to reactivate a benefit period and the Commission informed the claimant by letter dated June 30, 2016, that he was unable to receive EI benefits. Following his third application to reactivate his benefit period on December 7, 2016, the claimant submitted two requests for reconsideration on January 23 and January 25, 2017. The Commission determined that the requests for reconsideration were delayed more than 30 days allowed by section 112 of the *Employment Insurance Act* (EI Act) and refused to grant an extension of time to make a request for reconsideration. The claimant appealed to the Social Security Tribunal (Tribunal).

PRELIMINARY MATTER

[3] If a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing according to subsection 12(1) of the *Social Security Tribunal Regulations* (SST Regulations).

[4] Information retrieved from Canada Post shows the claimant's representative signed for the Notice of Hearing on January 14, 2018. On the same date, the claimant's representative also signed for the claimant's Notice of Hearing. Based on this evidence, the Tribunal is satisfied that the claimant and his representative received notice of the hearing. Consequently, the Tribunal

proceeded with the hearing in the claimant's absence. The Tribunal also notes that the claimant did not make any contact with the Tribunal immediately following the hearing to request an adjournment or express any desire to participate in the hearing.

ISSUE

1. When was the Commission's decision communicated to the claimant?
2. 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

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

[6] Where the Commission has denied an extension of time to request a reconsideration, the only question before the Tribunal is whether the Commission exercised its discretion judicially in refusing the extension of time to request a reconsideration. If the Tribunal finds that the Commission did not exercise its discretion judicially, the Tribunal can give the decision the Commission should have given.

[7] The Tribunal must first determine if the claimant's request for reconsideration was in fact filed late. 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 paragraph 112(1)(a) of EI Act.

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

[8] The Tribunal recognizes that there is considerable confusion in the file and neither the Commission nor the Tribunal have been able to speak with the claimant. The Commission made two decisions. On January 30, 2016, the claimant was denied EI benefits because he was outside of Canada. On June 30, 2016, his claim was reactivated effective May 22, 2016, but he was denied EI benefits because the Commission was unable to determine when his vacation ended. The claimant submitted two requests for reconsideration on January 23 and January 25, 2017. Both requests are similar and provide the similar information. As the claimant did not attend the

hearing, the Tribunal is unable to determine which decision he is requesting the Commission to reconsider.

[9] In his requests for reconsideration, the claimant stated that he did not receive any letters and only learned of the decisions when he signed in to check on reporting. However, he also stated that he returned to Canada on May 20, 2016, and was in Canada during all of his reporting.

[10] The Commission submitted that the decision letters dated January 30 and June 30, 2016, were both sent to the claimant's current address. This is the same address he stated on all three applications for EI benefits, his two requests for reconsideration and his Notice of Appeal. The Commission further stated that no letters were returned undeliverable by Canada Post.

[11] The Tribunal finds that the claimant's statement that he did not receive the letters is not credible because he was back in Canada when the second decision letter was sent, and he stated that he continued to file his reports. The Tribunal has no reason to doubt the Commission's evidence that no letters were returned undeliverable and at the very least, the claimant was aware of the decisions when he went online and completed his reports.

[12] Therefore, the Tribunal is satisfied that the first decision was communicated to the claimant when he returned to Canada on May 20, 2016, and the second on June 30, 2016. The Tribunal finds that the claimant filed his requests for reconsideration late.

2. 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?

[13] A decision by the Commission regarding an extension of time to request a reconsideration is discretionary (*Daley v. Canada (Attorney General)*, 2017 FC 297). Therefore, the Commission's decision can only be varied if the Commission did not exercise its power judicially (*Canada (Attorney General) v. Knowler*, A-445-95). A discretionary power is not exercised judicially if it can be shown that the decision maker: acted in bad faith; acted for an improper purpose or motive; took into account an irrelevant factor; ignored a relevant factor; or acted in a discriminatory manner (*Canada (Attorney General) v. Purcell*, 1 FC 644).

[14] The factors the claimant is required to meet in order to be granted an extension can be found in section 1 of the Reconsideration Regulations. Where one of the circumstances in subsection 1(2) of the Reconsideration Regulations applies, then the claimant must meet all four factors in subsections 1(1) and 1(2) of the Reconsideration Regulations. These factors are:

- 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 by a claimant who submitted another application for EI benefits after the decision was communicated to the person, then the Commission must also be satisfied that the request for reconsideration has a reasonable chance of success; and
- d) No prejudice would be caused to the Commission or a party.

[15] The Tribunal finds that the Commission did not exercise its discretion judicially. The Commission stated that to extend the 30-day period to file a request for reconsideration would cause prejudice to all other claimants for whom this has been denied for failing to meet those same conditions. However, subsection 1(2) of Reconsideration Regulations states that the Commission must also be satisfied that no prejudice would be caused to itself, the Commission, or a party by allowing a longer period to make the request. The Tribunal finds that all other claimants for whom this had been denied previously are not a party to this appeal and are not the Commission. Therefore, the Tribunal finds that the Commission took into account irrelevant information.

[16] Since the Tribunal finds that the Commission did not exercise its discretion judicially, the Tribunal must consider whether the claimant met the requirements in the Reconsideration Regulations in order to determine if he should be allowed an extension to the 30-day deadline.

a) Reasonable explanation for the delay

[17] The Tribunal finds that the claimant did not have a reasonable explanation for the delay when the decisions were communicated to him on May 20 and June 30, 2016, to January 23 and January 25, 2017, when his requests for reconsideration were made.

[18] The claimant stated in his request for reconsideration that he returned to Canada on May 20, 2016, and he reported it online. He stated that he returned to work and he continued to do his reports online but the questions were different this time. The question asked was “Did you return to Canada during the period of this report?” He answered “No” each time because he had not left Canada again therefore how could he return? However, the Tribunal finds that the claimant applied to reactivate a benefit period for a claim for regular EI benefits on May 29, 2016. Therefore, the Tribunal is not convinced that the claimant completed a report indicating that he returned to Canada.

[19] Following the application for benefits submitted on May 29, 2016, the Commission attempted to contact the claimant on June 27 and June 28, 2016, and messages were left but the claimant did not respond. The Commission sent the decision letter on June 30, 2016, denying the claimant EI benefits starting May 22, 2016, because he had not returned two phone calls and they were unable to determine when his vacation ended. The claimant then applied to reactivate a benefit period claiming regular EI benefits on December 7, 2016. He indicated that he worked from June 3 to December 6, 2016. The Commission sent a letter dated February 20, 2017, asking the claimant to contact the Commission. On March 2, 2017, the Commission contacted the claimant and his wife said he was out of Canada. The Commission decided that they would not reconsider their decision because the 30-day timeframe had passed.

[20] The claimant stated in his Notice of Appeal that his work is busy with very long days and little time for breaks to eat and it is not possible to make phone calls staying a long time on hold. He added that his wife tried but cannot find anything out on his behalf.

[21] The Tribunal finds that the claimant’s reasons that he was very busy at work or he was outside of Canada are not reasonable explanations for the delay. It is the claimant’s responsibility to ensure he meets the requirements of the EI Act to receive EI benefits. The claimant continued to do his reports and admittedly found the questions different from other years but he did not make any efforts to contact the Commission or visit a Service Canada centre. He also did not return the Commission’s phone calls or respond to the letter sent asking him to contact them. Therefore, the Tribunal finds that the claimant did not provide a reasonable explanation for the delay.

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

[22] The Tribunal finds that the claimant did not act as diligently as could be expected of a claimant to request a reconsideration of the Commission's decision. Although the claimant submitted his reports and new applications to reactivate his benefit period, he made no efforts to contact the Commission to clarify why the questions on his report cards were different or how to proceed if he disagreed with the Commission's decisions. The evidence indicates that the claimant did not do anything until he applied to reactivate his claim for EI benefits. Therefore, the Tribunal finds that the claimant had not demonstrated a continuing intention to request a reconsideration.

CONCLUSION

[23] The legal test 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 claimant has not met the first two factors, the Tribunal finds that the claimant's appeal cannot succeed.

[24] The Tribunal concludes that the claimant's request for an extension of time to the 30-day period to make a request for reconsideration under subsection 112(1) of the EI Act is refused.

[25] The appeal is dismissed.

K. Wallocha
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 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.

(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 a party 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*.