



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. L. v. Canada Employment Insurance Commission*, 2018 SST 1011

Tribunal File Number: GE-17-3197

BETWEEN:

T. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Leanne Bourassa

DATE OF DECISION: May 2, 2018

REASONS AND DECISION

INTRODUCTION

[1] On July 18, 2016 the Appellant made an initial claim for employment insurance benefits and was advised by the Respondent that she was disqualified from receiving benefits because she had left her employment voluntarily without just cause and had failed to prove her availability for work. This disqualification resulted in an overpayment and on July 8, 2017 a notice of debt was issued to the Appellant. On July 17, 2017 the Appellant requested a reconsideration of the September 15, 2016 decision to disqualify her from receiving benefits and the Respondent refused to grant an extension to the 30 day limit for requesting the reconsideration of a decision. The Appellant then requested that the Respondent write-off the overpayment and the Respondent advised her in writing on September 12, 2017 that they did not have the authority to reconsider a decision made with respect to the write-off. The Appellant appealed this decision to the Tribunal.

ISSUE

[2] The Tribunal must decide whether the appeal should be summarily dismissed.

THE LAW

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[4] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[5] Section 112.1 of the *Employment Insurance Act* (the Act) states that a decision of the Commission under the *Employment Insurance Regulations* respecting the writing off of any penalty, amount owing or interest accrued on any penalty owing or amount payable is not subject to review under section 112.

[6] Section 113 of the Act states that a party who is dissatisfied with a decision of the Commission made under section 112 of the Act may appeal the decision to the Tribunal.

[7] Section 56 of the *Employment Insurance Regulations* states that in certain cases the Commission may write-off a penalty, an amount payable or the interest accrued on a penalty or amount payable.

EVIDENCE

[8] The Appellant made an initial claim for employment insurance benefits on July 18, 2016. (GD3-3 to GD3-14)

[9] On September 15, 2016 the Appellant was advised that she was disqualified from receiving benefits because she had voluntarily left her employment without just cause and as she had advised that she did not work because she needed time to recuperate prior to starting a course of training, she had not proven her availability for full time work. (GD3-18 to GD3-19).

[10] A Notice of Debt was issued to the Appellant on July 8, 2017 indicating that she owed a total of \$438.00 further to an overpayment she had received resulting from a disqualification. (GD3-20).

[11] On July 17, 2017, the Appellant requested a reconsideration of the Respondent's decision of September 15, 2016 disqualifying her from receiving employment insurance benefits.

[12] The Respondent advised the Appellant verbally (GD3-25) and in writing (GD3-27 to GD3-28) on August 8, 2017 that because she had not provided a reasonable explanation for the delay in requesting reconsideration of the September 15, 2016 decision, they would not proceed with a reconsideration of that decision as it had been received outside of the 30 day limit for requesting reconsideration and she could appeal this decision to the Tribunal within 30 days.

[13] On August 11, 2017, the Respondent received a request from the Appellant to write-off the overpayment of which she had been advised in the Notice of Debt dated July 8, 2017. (GD3-29)

[14] The Respondent wrote to the Appellant on September 12, 2017 with respect to her “request for reconsideration” received on August 11, 2017, indicating that the issue was not one that the Commission had the authority to reconsider. The Appellant was also advised that if she disagreed with a decision of the Commission denying her request for a debt write-off, she could file an application for judicial review of the decision with the Federal Court – Trial Division. (GD3-30).

SUBMISSIONS

[15] The Appellant submitted that given that the overpayment was the result of a Commission entry error which occurred in September 2016, it should be written-off. She has received unclear and contradictory information from the Commission and should not be penalized for their errors.

[16] The Respondent submitted that a claimant cannot request a reconsideration of a decision by the Commission on a write-off matter and as a result cannot appeal such a decision before the General Division of the Social Security Tribunal. Only the Federal Court of Canada has the jurisdiction to hear an appeal on this type of issue.

ANALYSIS

[17] Subsection 112(1) of the Act states that an Appellant who is subject to a decision of the Commission may make a request to the Commission for reconsideration. Section 113 of the Act states that if the Appellant is dissatisfied with the decision of the Commission made under subsection 112(1) of the Act (in other words, the Commission’s reconsideration decision), the Appellant may appeal that decision to the Tribunal. The Tribunal has jurisdiction to consider an issue pursuant to section 113 of the Act. The Commission must have made both an initial decision and a reconsideration decision before the Tribunal can hear an appeal on the issue.

[18] However, the Commission’s authority to reconsider a decision they have made is restricted by section 112.1 of the Act which states that a decision made by the Commission under the *Employment Insurance Regulations* respecting the write-off of any penalty owing, amount payable or interest accrued on any penalty owing or amount payable is not subject to review under section 112. Therefore, a decision by the Commission to refuse a write-off cannot be reconsidered by the Commission under section 112 of the Act. If the decision cannot be

reconsidered by the Commission pursuant to section 112 of the Act, then no decision will exist that is subject to appeal to the Tribunal pursuant to section 113 of the Act.

[19] Prior to reaching a decision on the present matter, the Tribunal wrote to the Appellant to give notice of an intention to summarily dismiss the appeal, as required by section 22 of the *Social Security Tribunal Regulations*. In her response to this notice, the Appellant argued that the Commission did not make a decision with respect to her request to write-off her debt, but simply advised her that a decision to deny a request to write-off a debt could not be reconsidered and advised her that if she did not agree with the decision, she could request judicial review of the decision by the Federal Court. The Appellant also raised several issues with respect to the information she received from the Commission and notices she received from the Tribunal that her appeal was considered to have been filed late.

[20] First, the Tribunal would clarify that further to the Appellant's explanations that she was not appealing the Commission's decision dated August 8, 2017, but rather the decision outlined in the letter of September 12, 2017, the Tribunal has found that her Notice of Appeal was not received beyond the required 30 day period for submitting an appeal to the Tribunal and for that reason is proceeding with a consideration of her appeal with respect to the Commission's decision of September 12, 2017.

[21] Second, in reviewing the evidence before it, the Tribunal has considered the arguments raised by the Appellant in her response to our notice of intention to summarily dismiss and finds two reasons why it does not have the authority to hear an appeal with respect to the Appellant's request for write off: First, as the Appellant points out, there is no evidence that an initial decision with respect to the write-off was made by the Commission and second, if such a decision was issued, the Tribunal does not have the authority to hear an appeal on that issue.

[22] The Tribunal notes that the Commission does not appear to have issued an initial decision to refuse the Appellant's request for a write-off of the debt for which a notice of debt was issued on July 8, 2017. The evidence shows that the Respondent received the Appellant's request for a write-off of the overpayment on August 11, 2017. This is after the Appellant had been advised verbally and in writing that her request for the extension of a delay to request a reconsideration of the decisions concluding that she did not have sufficient hours of insurable employment to

qualify for benefits (GD3-17) and that she was disqualified from receiving benefits because she had left her employment voluntarily (GD3-18) had been denied. The only other correspondence the Appellant received from the Commission was a notice on September 12, 2017 indicating that they could not proceed with a reconsideration as requested as the issue of a request for write-off is not one that the Commission has the authority to reconsider. Between August 11, 2017 and September 12, 2017, it does not appear that the Commission communicated with the Appellant to notify her of a decision with respect to her request for a write-off of the overpayment.

[23] Pursuant to Section 56 of the *Employment Insurance Regulations*, the Commission does have the authority to write-off penalties owing by a claimant. There is no evidence on the record that a decision was made pursuant to Section 56 of the *Employment Insurance Regulations*, therefore a reconsideration of such a decision pursuant to subsection 112(1) of the Act could not have been undertaken. If no decision pursuant to section 112(1) could be taken, the Tribunal's authority to hear an appeal on such a decision pursuant to section 113 does not exist and an appeal to the Tribunal on those grounds has no chance of success.

[24] The Tribunal will also note that had a decision been issued by the Commission pursuant to section 56 of the *Employment Insurance Regulations*, neither the Commission nor the Tribunal would have had the authority to reconsider such a decision. This is confirmed by section 112.1 of the Act. As such, even if it is demonstrated that the Commission did issue an initial decision with respect to the Appellant's request for write-off, the proper recourse to challenge such a decision would be an action before the Federal Court of Canada, as indicated to the Appellant in the Respondent's letter of September 12, 2017.

[25] Although the Tribunal can understand the Appellant's frustration at having received inconsistent messages with respect to the recourses available to her, the Tribunal has no choice but to conclude that it does not have the authority to either make a decision or hear an appeal with respect to a request for a write-off. The appeal therefore has no chance of success and must be summarily dismissed.

CONCLUSION

[26] The Tribunal finds that the appeal has no reasonable chance of success; therefore the appeal is summarily dismissed.

Leanne Bourassa
Member, General Division - Employment Insurance Section