



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. D. v. Canada Employment Insurance Commission*, 2018 SST 363

Tribunal File Number: GE-18-721

BETWEEN:

**C. D.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Teresa Jaenen

HEARD ON: April 26, 2018

DATE OF DECISION: May 1, 2018

## **DECISION**

[1] The appeal is dismissed. The Tribunal finds that the Commission exercised its discretion judicially when it denied the extension of time to request a reconsideration of their decision because it considering the relevant information and did not ignore important information when analyzing the factors to be considered.

## **OVERVIEW**

[2] The Appellant established a claim for employment insurance benefits (EI) on August 12, 2012, and while on claim he returned to work and failed to advise the Canada Employment Insurance Commission (Commission). On April 10, 2013, the Commission issued a notice of disqualification to the Appellant because while he was on claim he did not report that he had worked and had earnings and subsequently voluntarily left the employment. This caused an overpayment, and a penalty was imposed.

[3] The Appellant submitted a Request for Reconsideration on December 15, 2017, stating that he didn't know he could have appealed the decisions. He was young and immature and didn't realize the consequences for not doing so. He is willing to repay the overpayment but would appreciate a break on the penalty. The Commission determined that the Request for Reconsideration was greater than 365 days which is outside the 30-day time limit and refused to reconsider their decision because the Appellant has failed to show he had a reasonable explanation for the delay had always intended to request a reconsideration of the decisions. The Respondent denied the request for reconsideration, and the Appellant appealed to the Tribunal.

## **ISSUE**

[4] 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] The Commission may provide an extension of this time under subsection 1(1) of the Request for Reconsideration Regulations that provides for the purposes of paragraph 112(1)(b) of the Act and subject to subsection (2) , providing that there is a reasonable explanation for the delay, a continued intention for a request for reconsideration has been demonstrated and that the request for reconsideration has a reasonable chance of success and that no prejudice would be caused to the Commission or other persons by allowing a longer period to make the request.

[7] The extension of time to appeal holds that the Commission's power to extend the deadline within which to appeal to the Commission's decision is discretionary and its decision to allow or refuse an extension could only be reversed if it exercised its discretion "non-judicially" or if the decision was based on irrelevant considerations or without taking relevant considerations into account (*Chartier A-42-90*).

[8] If a Commission's decision on an extension of time to seek reconsideration is appealed, the only issue before the Tribunal for determination is whether an extension of time for the reconsideration should be granted. The merits of the initial decision of the Appellant's overpayment and penalty are not issues before the Tribunal. The Tribunal can only intervene if it determines that the Commission did not exercise its discretion judicially.

[9] A claimant or other person, who is the subject of a decision of the Commission, can make a request of the Commission for a reconsideration of that decision within 30 days after the day on which a decision is communicated to them under section 112 of the *Employment Insurance Act* (Act). Therefore, the Tribunal must first decide when the decision dated April 10, 2013, was communicated to the Appellant.

[10] 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).

[11] The Tribunal concurs with the Commission that the decision was communicated to the Appellant on April 10, 2013, or shortly thereafter. The Appellant conceded that he did receive the April 2013 letter around that time.

**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?**

[12] Yes, the Tribunal finds the Commission exercised its discretion in a judicial manner because they considered all relevant information and did not consider irrelevant information in denying the Appellant's request. The Commission considered the four factors (a) is there is a reasonable explanation for the delay; (b) a continued intention for a request for reconsideration has been demonstrated; (c) that the request for reconsideration has a reasonable chance of success; and (d) that no prejudice would be caused to the Commission or other persons by allowing a longer period to make the request.

**a) Did the Appellant have a reasonable explanation for requesting a longer period?**

[13] No, the Tribunal finds the Appellant's reasons that he was young, immature and because of his lifestyle he didn't want to deal with the situation for almost five years is not a reasonable explanation.

[14] The Tribunal finds that the Commission acted judicially when they determined that the Appellant did not have a reasonable explanation for the delay from April 10, 2013, to December 15, 2017, when his Request for Reconsideration was received.

[15] The Appellant stated that he did not request a reconsideration earlier because he didn't know that he could appeal the decision. He stated that he also moved around a lot so he didn't receive all the correspondence from Service Canada. He was also a newcomer to the oil fields and making large sums of money which led to a lifestyle of drugs and alcohol. He stated he was young and wasn't taking the debt seriously and because of his anxiety he avoided it. The Appellant stated he is seeking the reconsideration now because he has grown up; he is married and has a son. He is now in a registered apprenticeship program and will need EI again, when he goes to school.

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

[16] No, the Tribunal finds the Appellant had not shown a continuing intention to request a reconsideration. The Appellant testified that he was again advised of the EI debt in 2014 when he spoke to someone in the government of repaying his student loan and he was told to contact Service Canada. He was also told again in 2017 by the same government people. The Tribunal finds the Appellant conceded that there was nothing that would have prevented from contact Service Canada before December 15, 2017.

[17] 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).

[18] The Commission advised the Appellant of his right to request a reconsideration of their decision on April 10, 2013, but he did not act until almost five years later when he submitted a request for reconsideration on December 15, 2017. The Tribunal finds that the Commission acted judiciously in concluding that, during the period from April 10, 2013, to December 15, 2017, Appellant did not demonstrate a continuing intention to appeal.

[19] The Appellant argues that he didn't know he could have asked for a reconsideration; however he testified that in 2014, when he spoke to a person regarding the repayment of his student loan, he was advised of his debt with EI and was told at that time to contact Service Canada to discuss the matter; however he chose not to do so until he was advised again in 2017.

**c) Will prejudice be caused to the other parties?**

[20] Yes, because it is greater than 365 days and allowing an appeal would cause prejudice to the Commission because the company that the Appellant worked for (and conceded by the Appellant) has been taken over by another company so to clarify any points with the employer at this time would be impossible.

[21] 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).

[22] The Tribunal finds the Appellant was notified of the decision on April 10, 2013, and waited until December 15, 2017, which was a lengthy delay of almost 5 years.

[23] 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.

**d) Does the Appellant's Request for Reconsideration have a reasonable chance of success?**

[24] The Tribunal finds there is no reasonable chance of success because the Appellant conceded that he worked, earned money and he did voluntarily leave the employment. He testified that he is willing to repay the overpayment and a portion of the penalty, but would like a break.

[25] The Appellant argues that he made an innocent mistake and would like to be given a break and the overpayment and penalty be written off or at least reduced.

[26] The Tribunal sympathy with the Appellant but it has no jurisdiction to write off or reduce the overpayment and can only decide if the request for reconsideration be allowed.

**CONCLUSION**

[27] The Tribunal cannot allow the Appellant's appeal to extend the 30-day period to make a Request for Reconsideration under subsection 112(1) of the Act and section 1 of the Reconsideration Regulations.

[28] The appeal is dismissed.

Teresa Jaenen  
Member, General Division - Employment Insurance Section

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|-----------------------|------------------|
| HEARD ON:             | April 26, 2018   |
| METHOD OF PROCEEDING: | Teleconference   |
| APPEARANCES:          | C. D., 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.