



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. G. v. Canada Employment Insurance Commission*, 2018 SST 1168

Tribunal File Number: GE-18-1774

BETWEEN:

**A G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

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

---

DECISION BY: Audrey Mitchell

HEARD ON: August 21, 2018

DATE OF DECISION: August 27, 2018

## **DECISION**

[1] The appeal is dismissed. The Respondent exercised its discretion in a judicial manner when it denied the Appellant's request to extend the 30-day reconsideration period.

## **OVERVIEW**

[2] The Appellant requested reconsideration of the Respondent's initial decision more than four and a half months after the initial decision was made. The Respondent refused to reconsider its decision because more than 30 days had passed since the decision was communicated to the Appellant. The Appellant disputes the Respondent's refusal to reconsider its initial decision because he was not aware that he could request reconsideration until he called the Respondent and was told to write a letter explaining his situation.

## **PRELIMINARY MATTERS**

[3] The Tribunal sent a notice of hearing to the Appellant, notifying him of the hearing date. Canada Post tracking information shows that the Appellant received the notice of hearing. The Tribunal joined the teleconference at the scheduled date and time but the Appellant did not. There is no evidence that the Appellant contacted the Tribunal either before or after the hearing to say that he could not attend the teleconference. Because the Tribunal is satisfied that the Appellant received the notice of hearing, the Tribunal proceeded in his absence (subsection 12(1), *Social Security Tribunal Regulations*).

## **ISSUE**

[4] Did the Respondent exercise its discretion in a judicial manner when it denied the Appellant's request to extend the 30-day period to request reconsideration of the Respondent's initial decision?

- a) Did the Appellant make a request to the Respondent for a reconsideration of its initial decision within 30 days of day on which the initial decision was communicated to him?
- b) Did the Appellant give a reasonable explanation for requesting a longer period?
- c) Has the Appellant demonstrated a continuing intention to request reconsideration?

## ANALYSIS

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

**Issue: Did the Respondent exercise its discretion in a judicial manner when it denied the Appellant's request to extend the 30-day period to request reconsideration of the Respondent's initial decision?**

[6] A person who is the subject of a decision of the Commission may make a request to the Commission for a reconsideration of that decision at any time within 30 days after the day on which the decision is communicated to them (paragraph 112(1)(a), *Employment Insurance Act*). The Commission may allow further time for a request for reconsideration of a decision (paragraph 112(1)(b), *Employment Insurance Act*). The Commission may allow a longer period to make a request for reconsideration of a decision if it is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request reconsideration (subsection 1(1), *Reconsideration Request Regulations*).

[7] The Federal Court has confirmed the discretionary nature of the Respondent's decision concerning an extension of time for reconsideration request (*Daley v. Canada (AG)*, 2017 FC 297).

[8] Discretionary decisions of the Respondent should not be disturbed unless it failed to act in a judicial manner, meaning acting in good faith, having regard to all the relevant factors and ignoring any irrelevant factors (*Canada (AG) v. Sirois*, A-600-95; *Canada (AG) v. Chartier*, A-42-90).

**a) Did the Appellant made a request to the Respondent for a reconsideration of its initial decision within 30 days of day on which the initial decision was communicated to him?**

[9] The Tribunal finds that the Appellant did not make a request to the Respondent for reconsideration of its initial decision within 30 days of the day on which the initial decision was communicated to him.

[10] The Appellant sent a request for reconsideration to the Respondent dated March 25, 2018. In his request, the Appellant noted that Respondent's initial decision was communicated to him on November 3, 2017. He attached a copy of the letter to his reconsideration request. Even though there is no record in the appeal file of the Respondent having spoken to the Appellant on November 3, 2017, which is the same date as its initial decision letter, the Appellant indicated that he had received a phone call telling him that he would not be getting employment insurance benefits.

[11] The Tribunal accepts the Appellant's evidence that the Respondent communicated its initial decision to him on November 3, 2017. Therefore, the Tribunal finds that the Appellant did not make his reconsideration request within 30 days of the day on which the Respondent's initial decision was communicated to him.

**b) Did the Appellant give a reasonable explanation for requesting a longer period to request reconsideration?**

[12] The Tribunal does not find that the Appellant gave a reasonable explanation for requesting a longer period to request reconsideration of the Respondent's initial decision.

[13] Unless there are exceptional circumstances, a prospective claimant is expected to take reasonably prompt steps to understand their entitlements to benefits and obligations under the *Employment Insurance Act (Canada (AG) v. Somwaru*, 2010 FCA 336; *Canada (AG) Kaler*, 2011 FCA 266).

[14] The Appellant stated that he was told that he would not be getting employment insurance benefits, but he did not know that he was able to contest this decision. He said that after he looked into why he was not getting benefits, he spoke to the Respondent who told him that he should write a letter and send in the reconsideration request form explaining his situation.

[15] Although the Appellant did not say when he got the Respondent's initial decision letter, the Tribunal notes that it was sent to the same address as the address that the Appellant listed as his home address on his notice of appeal. Because he attached the decision letter to his request for reconsideration, the Tribunal has no reason find that he did not receive the decision letter

within 10 days of the date of the letter if it was sent by regular mail. Indeed, the Appellant did not indicate that he received the decision later than would be expected.

[16] The Respondent's decision letter states that, "you have 30 days following the date of this letter (or from the date you were verbally notified, whichever occurred first) to make a formal request for reconsideration to the Commission". The letter indicated that the Appellant could get more information on how to request reconsideration by visiting its website, by calling the Respondent at a telephone number that was provided, or by visiting the nearest Service Canada centre.

[17] Because the Appellant did not participate in the hearing, the Tribunal was unable to explore what efforts, if any, the Appellant made to understand his right to request reconsideration of the Respondent's initial decision. The Tribunal does not find that the Appellant's explanation that he did not know that he could contest the Respondent's initial decision is reasonable, particularly since he had received the initial decision letter that gave clear information on requesting reconsideration as well as contact information in the event that the Appellant had questions.

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

[18] The Tribunal does not find that the Appellant demonstrated a continuing intention to request reconsideration.

[19] The Appellant did not request reconsideration of the Respondent's initial decision until he had looked into why he was not getting benefits and contacted the Respondent. He confirmed with the Respondent that he had not inquired about being able to request reconsideration until March 2018. He said that he had started his fourth year of an apprenticeship and was busy completing his studies, so his focus was on that.

[20] The Respondent communicated its initial decision to the Appellant on November 3, 2017. Based on the Appellant's evidence that his focus was on completing his studies, and because he did not contact the Respondent until March 2018 about its initial decision, the Tribunal does not find that he has demonstrated a continuing intention to request reconsideration.

[21] The Tribunal finds no reason to disturb the Respondent's decision, and finds that the Respondent exercised its discretion in a judicial manner under section 112 of *Employment Insurance Act* when it denied the Appellant's request to extend the 30-day reconsideration period.

**CONCLUSION**

[22] The appeal is dismissed.

Audrey Mitchell  
Member, General Division - Employment Insurance Section

HEARD ON:	August 21, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	

## 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*

##### **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.