



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. C. v Canada Employment Insurance Commission*, 2018 SST 1185

Tribunal File Number: GE-18-2843

BETWEEN:

T. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: November 5, 2018

DATE OF DECISION: November 8, 2018

DECISION

[1] The appeal is dismissed. The Member finds that the Commission exercised its discretion judicially when it denied the Claimant an extension of time to request a reconsideration.

OVERVIEW

[2] The Claimant applied for employment insurance regular benefits but was granted only 15 weeks of benefits based on her latest employment. When she enquired with the Canada Employment Insurance Commission (Commission), she was advised that her hours from her previous employment with X were not included in the calculation. That's because on November 28, 2017, the Commission had determined that the Claimant did not leave her employment with X with just cause. The Claimant did not request a reconsideration of that decision at that time. About 8 month later, on July 25, 2018, the Claimant requested that the Commission reconsider its initial decision of November 28, 2017. The Commission denied the Claimant's request and did not reconsider its decision. It argued that the Claimant delayed 209 days before submitting her request for reconsideration, which is past the 30-day legislated time limit. The Commission submitted that it could not grant an extension of time because the Claimant did not provided a reasonable explanation for the delay nor a continuing intention to request the reconsideration. The Claimant disagreed and appealed to the Social Security Tribunal of Canada (Tribunal).

ISSUE

[3] Did the Commission exercise its discretion judicially when it did not allow the Claimant further time to make a reconsideration request?

ANALYSIS

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

[5] On November 28, 2017, the Commission communicated by letter its initial decision to deny the Claimant benefits because she left her employment with X without just cause. At the hearing, the Claimant confirmed that she received this letter and was aware of this decision.

[6] A claimant, an employer or other person may request that the Commission reconsider its initial decision but it must do so within 30 days of that decision being communicated to that person (paragraph 112(1)(a) of the *Employment Insurance Act* (EI Act)).

[7] The Claimant requested that the Commission reconsider its initial decision on July 25, 2018, about 8 months after the initial decision was rendered. Her request for reconsideration was beyond the 30-day time limit and was therefore late.

[8] If the request for a reconsideration is not made within 30 days, the Commission may grant an extension (paragraph 112(1)(b) of the EI Act). The Commission's decision to allow or deny the extension of time to request a reconsideration is a discretionary one (Daley, T-1500-15).

[9] On August 30, 2018, the Commission denied the Claimant further time to request a reconsideration and therefore, did not reconsider its initial decision.

[10] According to the Federal Court of Appeal, the Tribunal can only intervene in this decision if the Commission did not exercise its discretion in a judicial manner when it denied the Claimant's request to extend the 30-day period for reconsideration of its initial decision. In other words, the Member must decide whether the Commission acted in good faith, proper purpose and motive and took into account any relevant factors, ignored any irrelevant factors and acted in a non-discriminating manner (Uppal, A-341-08; Tong, A-412-02; Dunham, A-708-95).

Issue: Did the Commission exercise its discretion judicially when it did not allow the Claimant further time to make a reconsideration request?

[11] Yes. The Commission considered all the relevant evidence and submissions provided by the Claimant when it made its decision to deny an extension of time to request a reconsideration. It therefore, met the burden of showing that it exercised its discretion in a judicial manner (Gagnon A-52-04).

[12] The requirements that must be met in order to obtain an extension of time are set out in section 1 of the *Reconsideration Request Regulations* (RR Regulations).

[13] 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) a reasonable explanation for requesting a

longer period and (b) the person has demonstrated a continuing intention to request a reconsideration (subsection 1(1) of the RR Regulations).

[14] If the request for reconsideration is made more than 365 days after the decision was communicated to the person, two additional requirements must be met. The Commission must also be satisfied that the request for reconsideration (a) has a reasonable chance of success, and (b) that no prejudice would be caused to the Commission or a party (subsection 1(2) of the RR Regulations).

[15] In this case, it is undisputed that the Claimant delayed submitting her request for reconsideration of the Commission's initial decision by 209 days. The Claimant must therefore show the Commission that she met both the requirements of subsection 1(1) of the Regulations. That is, if the Commission is not satisfied that either one of the requirements is not met, it may deny the Claimant's request.

[16] At the hearing, the Claimant reiterated the same reasons for the delay as she had provided to the Commission. When she received the Commission's letter of November 28, 2017, she did not think to request a reconsideration because (a) she started working with a new employer and (b) she didn't know that if/when she got laid off, the hours from X would not count towards her future entitlement. The Claimant testified that she honestly had no intention of requesting a reconsideration. However, after being paid only 15 weeks of benefits, she called the Commission to enquire as to why her benefit period ended. She requested that the Commission reconsider its initial decision at that time, on July 25, 2018. The Claimant also noted that in the meanwhile she had put in a claim with the Ministry of Labour against X and won that appeal. She was also pursuing an appeal with the Human Rights Tribunal against this same employer.

[17] The Commission submitted that the Claimant did not provide a reasonable explanation for the delay nor a continuing intention to request a reconsideration. It argued that there was no evidence to show that the Claimant was prevented from making her request earlier and/or within the 30-day requirement. The fact that the Claimant had filed a claim with the Ministry of Labour, on October 24, 2017, a month before the initial decision was rendered, is not a mitigating factor that contributed to the delay. It would not prevent her from submitting her request for reconsideration. The Commission determined that the Claimant's explanation that she was

working and did not know that the hours of that employment would not count toward her next claim is not a reasonable explanation for the delay. Further, the Claimant did not enquire about the initial decision until she submitted her request for reconsideration. She therefore did not establish a continuing intention to request the reconsideration.

[18] The Member finds that the Claimant provided the same reasons for the delay that were already considered by the Commission. The Claimant did not offer any new evidence to the Tribunal. Further, the Claimant failed to show ‘special reasons’ or special circumstances to explain why she failed to file a timely request for reconsideration (Penny, A-340-07).

[19] The Member finds that the Commission considered all the evidence and submissions before it when it made its decision to deny the extension. The Commission acted in good faith, proper purpose and motive. It took into account any relevant factors, ignored any irrelevant factors and acted in a non-discriminating manner when it denied the Claimant’s request to extend the 30-day period for reconsideration of its November 28, 2017 decision. The Member finds that the Commission exercised its discretion in a judicial manner and therefore, cannot intervene with this decision.

CONCLUSION

[20] The appeal is dismissed.

Eleni Palantzas

Member, General Division - Employment Insurance Section

HEARD ON:	October 29, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	T. C., 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.

112(2) The Commission must reconsider its decision if a request is made under subsection (1).

Reconsideration Request Regulations

1(1) For the purposes of paragraph 112(1)(b) of the *Employment Insurance Act* and subject to subsection (2) below, 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.

1(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*.