



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *V. S. v Canada Employment Insurance Commission*, 2019 SST 233

Tribunal File Number: GE-18-2833

BETWEEN:

**V. S.**

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: Christianna Scott

HEARD ON: January 24, 2019

DATE OF DECISION: January 31, 2019

## **DECISION**

[1] The appeal is dismissed. The Tribunal finds that the request for reconsideration was made late and the Canada Employment Insurance Commission (“Commission”) exercised its discretion judicially.

## **OVERVIEW**

[2] The Appellant made an initial request for regular employment insurance benefits. The Commission issued a decision disqualifying the Appellant from receiving benefits because the Commission determined that the Appellant had lost her employment due to misconduct (Initial Decision). Several months later, the Appellant made a renewal claim and was advised that she was not eligible to receive benefits as she had not accumulated sufficient insurable hours since losing her employment as a result of her misconduct (Renewal Decision).

[3] The Appellant made a request for reconsideration alleging that the insurable hours she accumulated before her dismissal for misconduct should be considered since she returned to work with the same employer. It was unclear whether the Appellant was making a request for the reconsideration of the decision Initial Decision or the Renewal Decision. The Commission declined the reconsideration request because it determined that the request was made beyond the 30-day period prescribed under the *Employment Insurance Act* (Act). The Appellant appealed this decision to the Social Security Tribunal (Tribunal).

## **PRELIMINARY MATTERS**

[4] The Appellant filed the present appeal with the Tribunal outside the 30-day time limit established under paragraph 52(1)(a) of the *Department of Employment and Social Development Act* (DESD Act). In a decision dated January 8, 2019, the Tribunal granted the Appellant an extension of time to appeal pursuant to subsection 52(2) of the DESD Act.

## **ISSUES**

[5] **Issue 1:** Was the Appellant’s request made outside the 30-day limit in which to make a reconsideration request?

**Issue 2:** If so, did the Commission exercise its discretion in a judicial manner in denying the Appellant’s request to extend the 30-day period to make a request for reconsideration?

## **ANALYSIS**

[6] The Act sets out that a claimant may make a request for reconsideration of a decision by the Commission within 30 days after the day the decision is communicated to the claimant (paragraph 112 (1)(a) of the Act). When a reconsideration request is made beyond 30 days, the Commission may grant the claimant further time to make a request for reconsideration (paragraph 112 (1) (b) of the Act). The decision, by the Commission regarding an extension of time to request reconsideration, is discretionary (*Daley v Canada (Attorney General)*, 2017 FC 297). The Commission must exercise its discretion according to the criteria set out in the *Reconsideration Request Regulations* (Regulations). When the extension of time requested relates to a period of 365 days or less, such as in this matter, the Commission may grant the request if it is satisfied that there is a reasonable explanation for requesting a longer period, and the claimant has demonstrated a continuing intention to request a reconsideration (Subsection 1(1) of the Regulations).

[7] Discretionary decisions attract a high level of deference. This means that the Tribunal cannot intervene unless the Tribunal finds that that the Commission failed to exercise its discretion “judicially”.

**Issue 1: Was the Appellant’s request made outside the 30 day limit in which to make a reconsideration request?**

[8] The Tribunal finds that the reconsideration request was made late.

[9] A claimant has 30 days, from the day on which a decision is communicated to them, to make a request for reconsideration. Requests beyond that timeframe are accepted at the Commission’s discretion in accordance with section 1 of the Regulations.

[10] The Appellant submits that her request for reconsideration is not late. In support of this argument, the Appellant acknowledged that she received the Initial Decision from the

Commission dated November 24, 2017, which determined that she was disqualified from benefits because she lost her employment due to misconduct. The Appellant also acknowledged receipt of the Commission's Renewal Decision of May 16, 2018, in respect of her renewal claim. In this decision, the Commission determined that the Appellant was not eligible for benefits because she had not worked long enough to receive benefits since losing employment as a result of misconduct. The Commission determined that she had 397 insurable hours when 665 insurable hours were required to establish eligibility for regular benefits. The Appellant testified that shortly after receiving this decision, she made a request for reconsideration which was received by the Commission on May 25, 2018. In this request for reconsideration, the Appellant stated her reasons for reconsideration in the following manner, "I have more than 397 hours of insurable employment as I have worked for the same employer for more than 10 years. I was rehired...after settling the misunderstanding with my boss [...] My insurable hours prior to October 1, 2017, should be considered for my claim since I have retained my job with the same employer."

[11] The Appellant reiterated these arguments before the Tribunal to support her position that her request for reconsideration was not late. She further clarified that she was not late since she is not seeking to reactivate benefits for her previous claim that was to be effective October 8, 2017. She argued that she is seeking reconsideration solely for the purposes of establishing her renewal claim, and thus her reconsideration request is in respect of the decision of May 16, 2018.

[12] The Tribunal finds that the substance of the Appellant's reconsideration request does not relate to the Commission's decision of May 16, 2018, following her renewal application, but rather to the initial decision of November 24, 2017 wherein a disqualification was imposed as the Commission found that she had lost her employment because of her misconduct. The Commission's initial decision not only made a determination on the Appellant's ability to receive benefits effective October 8, 2017, it also had an impact on future eligibility for benefits. The decision clarifies that, "to receive benefits you [Appellant] must work the required minimum number of insurable employment hours after losing your employment as a result of your misconduct". In essence, the initial decision which resulted in the imposition of a disqualification because it had been determined that the Appellant had lost her employment as a result of misconduct, meant that the hours accumulated prior to losing that employment could

not be used in order to qualify for benefits. The Appellant's reconsideration request seeks to reactivate the insurable hours that predate the Commission's initial decision and consequently amounts to a request for reconsideration of the initial decision which imposed the disqualification.

[13] The Tribunal finds that even though the Appellant is not seeking to reactivate her original claim that was to be effective October 8, 2017, the matter that she requests to be reconsidered relates to the decision of November 24, 2017.

[14] For those reasons, the Tribunal finds that the request for reconsideration which was received by the Commission on May 25, 2018, was beyond the 30-day period. It was therefore made late.

**Issue 2: Did the Commission exercise its discretion in a judicial manner in denying the Appellant's request to extend the 30-day period to make a request for reconsideration?**

[15] The Federal Court has confirmed that the Commission's decision, whether or not to grant an extension of time to make a request for reconsideration, is discretionary (*Daley, supra*).

[16] The Tribunal finds that the Appellant submitted her request for reconsideration beyond the 30 day period but less than 365 days after the initial decision was communicated to her. Accordingly, the Tribunal finds that the Commission applied the proper criteria in subsection 1(1) of the Regulations in considering whether to grant the Appellant additional time for this reconsideration request.

[17] The Tribunal can only interfere with the Commission's decision to refuse the extension of time to make the reconsideration request if the Commission failed to exercise its discretion judicially. The Commission's discretionary power is not exercised judicially if the Appellant proves that the Commission 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*, A-694-94).

[18] The Tribunal finds that the Commission exercised its discretion judicially when it declined to extend the time for the Appellant to file her reconsideration request.

***Reasonable Explanation for the Delay***

[19] The Appellant testified that she had reconciled with her former employer and was back working at her original job when she received the Commission's initial decision. She indicated that since she was working, she was no longer in need of employment insurance benefits. The Appellant testified that had she not returned to work for the same employer, she would have sought reconsideration. The Appellant testified that it was only once her employer shut down temporarily for renovations that she felt the impact of the decision. She testified that the decision not to accept the insurable hours that predate the Commission's determination on misconduct was unfair because she had returned to her old job with her previous employer. Even though the Commission made a finding of misconduct, the Appellant testified that things were worked out between her and her employer.

[20] The Commission determined that the Appellant's explanation for the delay was a reasonable explanation.

[21] Although the Tribunal disagrees with the Commission's conclusion that the Appellant's explanation for the delay in requesting a reconsideration is reasonable, the Tribunal cannot substitute its decision to that of the Commission unless the Commission failed to act judicially. The Tribunal finds that the Commission acted judicially in its assessment of this criterion as there is no evidence that the Commission acted in bad faith, acted for an improper purpose, took into account an irrelevant factor, ignored a relevant factor or acted in a discriminatory manner. As such, this Tribunal must show deference to the Commission's decision and cannot, with respect to this criterion, substitute its conclusion to that of the Commission.

***Continuing Intention to Request a Reconsideration***

[22] The Appellant testified that when she received the Initial Decision, she contacted the Commission to inquire if there was something that she needed to do to close up her file. She was informed that there was nothing required of her. The Appellant further testified that when she received the Renewal Decision she was prepared to accept the Commission's decision that she

had insufficient hours. It was only once she spoke with colleagues who had made claims due to the temporary shutdown of the employer's operations and who were in receipt of benefits that the Appellant decided to pursue her entitlement to benefits.

[23] The Tribunal notes that the arguments submitted by the Appellant to this Tribunal are essentially the same as those submitted to the Commission in support of her request for reconsideration. The Appellant argued primarily that the effect of the Commission's Initial Decision was unfair and unduly penalized her in light of her return to work with the same employer. The Appellant did not raise elements that would support a finding that the Commission acted in bad faith, for an improper purpose, took into account an irrelevant factor or acted in a discriminatory manner.

[24] Consequently, the Tribunal finds that the Commission exercised its discretion judicially when it considered the claimant's request for an extension of time to file her reconsideration. Therefore, the Tribunal will not interfere with the Commission's discretionary decision to refuse the extension of time to allow the Appellant to make her reconsideration request.

## CONCLUSION

[25] The appeal is dismissed.

Christianna Scott

Member, General Division - Employment Insurance Section

HEARD ON:	January 24, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	V. S., Appellant