



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. M. v Canada Employment Insurance Commission*, 2019 SST 240

Tribunal File Numbers: GE-18-3790
GE-18-3812
GE-18-3814

BETWEEN:

G. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Solange Losier

HEARD ON: January 23, 2019

DATE OF DECISION: February 7, 2019

DECISIONS

[1] The appeals are allowed. The Appellant has proven that his request for reconsideration was submitted within the 30 day period from the date that the Respondent's decisions were communicated to him.

PRELIMINARY MATTER

[2] Subsection 13 of the *Social Security Tribunal Regulations* states: The Tribunal may, on its own initiative or if a request is filed by a party, deal with two or more appeals or applications jointly if (a) a common question of law or fact arises in the appeals or applications; and (b) no injustice is likely to be caused to any party to the appeals or applications.

[3] The Appellant consented to hearing all three appeals jointly, specifically GE-18-3790; GE-18-3812 and GE-18-3814. I also find that there is a common question of law and fact among all three files and there is likely no injustice to be caused to any party. Accordingly, the appeal files are joined under s. 13 and this decision decides all three appeal files.

OVERVIEW

[4] The Appellant was in receipt of employment insurance benefits during various periods commencing from 2010. The Respondent determined that the Appellant received earnings from his employment while he was in receipt of employment insurance benefits and that he failed to declare earnings received from three different employers. The Respondent concluded that the Appellant made false representations knowingly. As a result, three separate initial decision letters were issued by the Respondent, each including decisions on the overpayments resulting from the undeclared earnings, imposing penalties and issuing notices of violation.

[5] The Appellant submitted a Request for Reconsideration for all of the initial decisions to the Respondent on September 26, 2018. The Appellant told the Respondent that he could not recall the specific date that the initial decisions were communicated to him. The Appellant acknowledged that he was aware that he owed a debt in 2014, but did not know the particulars about the debt, including to whom the money was owing to and how much money was owed.

The Respondent determined that the reconsideration requests were made late and refused to allow an extension of time. The Appellant appealed to the Social Security Tribunal (Tribunal).

ISSUES

[6] Issue 1: Were the initial decisions below communicated to the Appellant and if so, what is the date of communication?

- GE-18-3814: Initial decision letter dated October 30, 2012 (GD3-11 to GD3-12)
- GE-18-3790: Initial decision letter dated June 24, 2013(GD3-13 to GD3-15)
- GE-18- 3812: Initial decision letter dated December 9, 2013 (GD3-12 to GD3-14)

[7] Issue 2: Was the reconsideration request submitted to the Respondent late?

[8] Issue 3: Did the Respondent properly exercise its discretion judicially when it refused to allow the Appellant further time to make a reconsideration request?

ANALYSIS

[9] The issue to determine is whether the Respondent properly exercised its discretion when it refused further time for the Appellant to bring his request for reconsideration. The Tribunal is only permitted to intervene if the Respondent has not properly exercised its discretion.

[10] The discretionary nature of the decision to deny or allow further time to request a reconsideration was recently confirmed by the Federal Court (*Daley v. Canada (Attorney General)*, 2017 FC 297).

[11] The Respondent may allow a longer period if they are satisfied there is a reasonable explanation for requesting a longer period and the person has shown a continuing intention to request a reconsideration (ss.1(1) of the *Reconsideration Request Regulations* (Regulations)).

[12] For delays that exceed 365 days, subsection 1(2) of the Regulation requires that the Respondent must also be satisfied the request for reconsideration has a reasonable chance of success and that no prejudice would be caused by allowing a longer period.

[13] **Issue 1: When were the initial decisions communicated to the Appellant?**

[14] I find more likely than not, that all of the initial decisions were communicated to the Appellant at the same time, during the week of August 27, 2018 to August 31, 2018.

[15] The burden of proving communication rests with the decision-maker, in this case, the Respondent (*Bartlett v. Canada (Attorney General)*, 2012 FCA 230).

[16] The term “communicated” is not defined within the *Employment Insurance Act* (Act); however, the courts have interpreted it to require a positive action on the part of the decision-maker to advise a party of the substance and effect of a decision. Communication does not require that the full particulars be given to a party or that a party be made aware of any right of appeal or reconsideration (*R & S Industries Inc. v. Minister of National Revenue*, 2007 FC 469).

[17] The Respondent submits that the initial communication date of all three initial decisions occurred on December 31, 2014 (GD4-1 to GD4-4). The Respondent stated that based on the guidance from their business expertise advisor, they determined that the communication date of the three initial decision letters occurred on December 31, 2014 because the Appellant could not remember an exact date. The Respondent notes that the Appellant was aware of a debt in 2014 and that they gave him the benefit of the doubt by determining that it was the last day of that year.

[18] The Appellant told the Respondent that he knew about a significant debt owing in 2014, which was sometime before his hospitalization (GD3-31). He said that he contacted Canada Revenue Agency (CRA) in August 2018 to inquire about the debt. He noted that when he contacted CRA he was advised that he owed \$21,703.15 and that it arose from an employment insurance debt.

[19] The Appellant testified that he was aware that he had an existing debt in 2014, but said that he had no idea how much was owed and to whom. He did not know what had caused or resulted in the debt. He does not recall seeing or receiving any letters. He said he was not taking his medication and his mental health issues were also impairing him at that time. More specifically, he said that his ongoing symptoms and fear impacted his ability to investigate or take actions given his state of mind. He explained that he had not completed his taxes for several

years and that is what prompted him to contact the CRA in August 2018 as he feels that his life, circumstances and mental health issues have since stabilized. He said that he has engaged with and been supported by a local mental health organization that is helping him with various tasks, including helping him sort out his taxation issues.

[20] The Appellant testified that he is pursuing these appeals because he is motivated to address any outstanding debt issues and his taxes even though he is currently receiving financial support from the Ontario Disability Support Program (ODSP) and is unlikely to have the financial means to pay any of his debts, nor could his ODSP be garnished to repay the overpayment.

[21] I was not persuaded by the Respondent's submission that the initial decisions were communicated to the Appellant on December 31, 2014 as a default date of communication. I note that the Respondent acknowledged and accepted as fact that the Appellant was not aware of the details of the debt, or to whom it was owed (GD3-29; GD3-31). I find that while the Appellant knew that he owed a debt in 2014, it is insufficient to establish that the initial decisions were communicated to him in a manner that would show he was advised of the substance and effect of the decisions made by the Respondent. At a minimum, the Appellant would have needed to know to whom the debt was owing so that he could take any action and he did not become aware of this information until he called the CRA in August 2018.

[22] I was also persuaded by the Appellant's testimony and documentary evidence about his mental health issues at that time, his homelessness, his inability to get his mail, his sister throwing out his belongings including his mail, and his involuntary hospitalization. I find that this supports that he was not aware of the substance of the decisions made by the Respondent, and, while not decisive, given that the burden is on the Respondent to show communication and I have found that in this case the burden is not met, I accept that the Appellant did not receive the letters, and likely did not have the ability or capacity while he was hospitalized to further investigate at that time.

[23] As a result, I preferred the Appellant's evidence that he only first became aware of the amount of debt and to whom it was owed when he contacted CRA in August 2018 and that, at that time, he became aware of the employment insurance decisions that were the reason for the

debt. This is when all of the decisions at issue were communicated to him. Once he was made aware of the EI decisions by the CRA, he filed his reconsideration request. I also accept that his motivation to initiate contact with the CRA in August 2018 was because he was trying to sort out his tax issues because he had not filed his income tax returns for 4 or 5 years.

[24] The Appellant cannot recall the specific date in August 2018 that he called CRA, however he recalled that it occurred at the end of the summer because he spent around 9 hours calling 6 different phone numbers to reach the appropriate department. I note that the last week of summer commences from August 27, 2018 to August 31, 2018. Therefore, I find it more likely than not, that the decisions were communicated to the Appellant during the week of August 27, 2018 to August 31, 2018 when he called CRA.

[25] **Issue 2: Was the reconsideration request submitted to the Respondent late?**

[26] No, I find that the reconsideration request was not submitted to the Respondent late because it was filed on September 26, 2018 and the decisions were only communicated to him during the week of August 27, 2018 to August 31, 2018, when he became aware of the details of the debt from the CRA, which was within the 30 days from the date of communication.

Issue 3: Did the Respondent properly exercise its discretion judicially when it refused to allow the Appellant further time to make a reconsideration request?

[27] It is not necessary to address whether the Respondent properly exercised their discretion judicially because the requests for reconsideration on all three files were not submitted late.

CONCLUSION

[28] The appeals are allowed.

Solange Losier
Member, General Division - Employment Insurance Section

HEARD ON:	January 23, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. M., Appellant