



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. P. v Canada Employment Insurance Commission*, 2019 SST 244

Tribunal File Number: GE-19-588

BETWEEN:

G. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christopher Pike

DATE OF DECISION: February 11, 2019

DECISION

[1] The Appellant did not bring his appeal to the Tribunal in time. The Tribunal therefore cannot proceed with it.

OVERVIEW

[2] On November 1, 2012, the Appellant applied to the Canada Employment Insurance Commission (Commission) and later received employment insurance benefits. The Commission subsequently determined that the Appellant failed to report income he received while in receipt of benefits in November 2012 and January 2013 and therefore established an overpayment. As a consequence, the Commission also imposed a penalty and issued a Notice of Violation on the Appellant. As well, the Commission determined that the Appellant voluntarily left his employment on January 20, 2013. Further to a request for reconsideration of these decisions, the Commission confirmed its positions on all issues in July 2014. The Appellant appealed these reconsideration decisions to the Social Security Tribunal (Tribunal) on January 24, 2019.

ISSUE

[3] Did the Appellant bring his appeal within one year of the Commission communicating its reconsideration decision to him?

ANALYSIS

[4] An appeal may not be brought to the General Division of the Tribunal more than one year after the day on which the Commission communicated its reconsideration decision to the Appellant (*Department of Employment and Social Development Act* (DESD Act), subsection 52(2); *Fazal v. Canada (Attorney General)*, 2016 FC 487).

[5] The Commission must prove that it communicated the decision which the Appellant wishes to appeal (*Bartlett v. Canada (Attorney General)*, 2012 FCA 230). The communication to the Appellant must unambiguously inform him of the nature and effect of its decision (*Peace Hills Trust Co. v. Moccasin*, 2005 FC 1364; *Skycharter Ltd. v. Canada (Minister of Transport)*, T-2625-96).

[6] The Appellant did not bring his appeal within one year of the Commission communicating its reconsideration decisions to him.

[7] The Appellant stated in his Notice of Appeal that he had attached a copy of the reconsideration decision he wished to appeal and that he had received it on January 29, 2019. The reconsideration decision attached was that of July 31, 2014. The Appellant therefore asserts that he did not receive the Commission's decision until 4½ years after it was made.

[8] The Commission filed a record of the Appellant's claim with the Tribunal. This record includes a letter dated February 13, 2014 asking the Appellant explain his failure to report earnings that he received in November 2012 and January 2014. The town in which the Appellant live was not properly named, and in fact, the town name stated on the letter does not appear to exist in the province where the Appellant lives.

[9] On March 18, 2014, an agent noted the Appellant "failed to reply to request for explanation of why they failed to disclose the reason for separation. The Commission can reasonably conclude that the client received the letter and agrees with its contents." The agent then determined that the Appellant had voluntarily left his employment on January 20, 2013, had failed to report income he received in November 2012 and January 2014, imposed a penalty of \$5,820, and issued a Notice of Violation.

[10] Considering the nature of the Commission's error in addressing it February 13, 2014 letter, I find that it is more probable than not that the Appellant did not respond to it because he did not receive it and not because he agreed with its contents, as asserted by the Commission.

[11] On March 25, 2014, the Commission issued a letter addressed to the Appellant setting out the determination which the agent made on March 18, 2014. This letter was more egregiously misaddressed: no town was named in the address at all. Even so, the Appellant stated in his reconsideration request dated April 10, 2014, that he was informed verbally of the decision he wished to request a reconsideration of, on April 4, 2014. A copy of the decision he wished to have reconsidered was not attached to his reconsideration request and the Commission had produced no record of the April 4, 2014 conversation with the Appellant.

[12] The Appellant supported his April 10, 2014 reconsideration request with a letter dated April 9, 2013. This letter refers to the Appellant's Record of Employment for a period of employment which started on November 8, 2012. This Record of Employment was dated May 15, 2013. I find that this evidence shows it is more probable than not that the letter dated April 13, 2013 could not have been prepared on that date because it referred to a document that did not exist on April 13, 2013. Considering that the April 13, 2013 was prepared to support the Appellant's reconsideration requested dated April 10, 2014, I find it is more probable than not that the letter was actually prepared on April 9, 2014.

[13] The April 9 letter presents the Appellant's rebuttal to information the Commission supplied in its March 25, 2014 decision letter. It thus shows the Appellant's knowledge of the nature and effect of the Commission's March 25, 2014 decision. I therefore find that the Appellant had knowledge of the nature and effect of the Commission's March 25, 2014 decision no later than April 9, 2014.

[14] On July 31, 2014, a Commission agent discussed the Appellant's reconsideration request with him by telephone. The agent's notes show that she discussed the overpayment and voluntarily leaving decision with the Appellant.

[15] The evidence shows that the Appellant knew the nature and effect of the Commission's March 25, 2014 decision when he discussed the outcome of his reconsideration request with the Commission's agent on July 31, 2014. I find that the Appellant knew the nature and effect of the July 31, 2014 decision no later than July 31, 2014 through a telephone conversation with a Commission agent. He filed his appeal with the Tribunal on January 24, 2019; more than four years later.

[16] The Appellant asserts that he did not receive the Commission's July 31, 2014 letter in a timely manner. I have therefore considered when the Commission communicated its decision to the Appellant in writing.

[17] I note that the Commission's July 31, 2014 reconsideration letter was also misaddressed and did not identify the town where the Appellant lived or any other community. I also note that the Appellant contacted the Commission by telephone March 30, 2015. On March 31, 2015, one

of the Commission's agents offered to send the Appellant copies of its letters dated March 25, 2014 and July 31, 2014.

[18] A copy of the Commission's letter dated March 31, 2015 shows that it was addressed in the same defective manner as its February 13, 2014 letter. This letter also appears to suggest that the Appellant still had the right to file a reconsideration request.

[19] There is no record of further contact between the Appellant and the Commission until August 13, 2015, when a Commission agent made a record of a telephone call from the Appellant. The agent noted "He have now received all of the letter from SC in one envelope dated a couple of weeks ago" [sic]. The agent referred to an addressing error consistent with the one that the Commission made in the March 31, 2015 letter. She noted that the Appellant told her that the envelope had been delivered to a street address similar to the Appellant's in a different community before it reached him. I find that this evidence shows it is more probable than not that the Commission's July 31, 2014 letter finally reached the Appellant, at the latest, on August 13, 2015 under cover of the Commission's March 31, 2015 letter.

[20] Considering this evidence, I find that the Appellant received a copy of the Commission's July 31, 2014 letter at the latest, on August 13, 2015. Thus, if the Commission was obliged to communicate its decision in writing, this evidence shows that it unambiguously communicated the nature and effect of its July 31, 2014 letter to the Appellant no later than August 13, 2015. He filed his appeal with the Tribunal on January 24, 2019; more than three years later.

[21] The Tribunal must apply subsection 52(2) of the DESD Act, which clearly states that in no case may an appeal be brought more than one year after the reconsideration decision was communicated to the Appellant. Any explanation which the Appellant might offer for the late appeal is irrelevant (*M. E. v Minister of Employment and Social Development*, 2016 CanLII 59043). I therefore find that the Appellant had brought his appeal more than one year after the Commission communicated its reconsideration decision to him, and for that reason, the appeal cannot proceed.

[22] I also note that Commission agents told the Appellant in writing on July 31, 2014 and March 31, 2015 that he had recourse to the Tribunal. However, the Commission has no

obligation to inform the Appellant of his appeal rights in order to meet its obligation to communicate the nature and effect of its decisions to him (*R & S Industries Inc. v. Canada (National Revenue)*, 2016 FC 275).

CONCLUSION

[23] I am sympathetic to the Appellant's circumstances. However, the law which I must apply is clear and leaves me no discretion to allow his appeal to proceed. The appeal is dismissed.

Christopher Pike
Member, General Division - Employment Insurance Section