



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. C. v Canada Employment Insurance Commission*, 2019 SST 250

Tribunal File Number: GE-18-3403

BETWEEN:

**L. C.**

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: Lucie Leduc

HEARD ON: January 17, 2019

DATE OF DECISION: February 18 2019

## **DECISION**

[1] The appeal is allowed.

## **OVERVIEW**

[2] The Appellant had a long career of 34 years as a public servant. He was manager of X for X for the last 10 years of his career. Following a decision that X would be consolidated to the pay center over a period of two years, the employer put in place a workplace adjustment process. From that process, the Appellant's position was abolished and he chose to seek his retirement, which included a significant severance pay. On March 7, 2016, the Employment Insurance Commission (the Commission) wrote a letter to the Appellant informing him that he was disqualified from the benefits based on the fact that he had voluntarily left his employment without just cause.

[3] The appellant requested reconsideration to the Commission of their March 7, 2016 decision. He explained his delay by indicating that he had never received the decision letter from the Commission. The Commission refused to reconsider their decision of March 7, 2016 because it concluded that the request was late and that the Appellant did not meet the requirements of the *Reconsideration Regulations*.

## **ISSUE**

[4] The Tribunal must decide whether or not the Commission has exercised its discretionary power in a judicial manner when it refused to prolong the 30-day period for reconsideration of their decision.

## **ANALYSIS**

[5] The Tribunal notes that the only issue under appeal is whether the Appellant's request to extend the 30-day period for reconsideration of the Commission's March 7, 2016 decision should be granted. The Commission's initial decisions regarding the Appellant's disqualification from benefits because of a voluntarily leaving is not the issue before the Tribunal and will not be addressed in this decision.

**Issue under appeal: Has the Commission has exercised its discretionary power in a judicial manner when it refused to prolong the 30-day period for reconsideration of its decision dated March 7, 2016?**

[6] According to Section 112 of the *Employment Insurance Act* (the Act), a claimant, employer or other person may request that the Commission reconsider its initial decision. Section 1 of the *Reconsideration Request Regulations* sets out the requirements that must be met in order to obtain an extension of time to seek a reconsideration under paragraph 112(1)(b) of the Act. A claimant requesting reconsideration must do so within 30 days of that decision being communicated to that person.

[7] In this case, the Tribunal finds that the Commission should allow the Appellant's request to extend the 30-day period for reconsideration of its initial decisions, because the evidence is that the initial decision was never communicated to the Appellant.

[8] The Tribunal considered case law regarding former provisions relating to extension of time to appeal to the Board of Referees (section 114 of the Act as it read prior to April 1, 2013). It held that the Commission's power to extend the deadline within which to appeal its decision was (a) discretionary and (b) its decision to allow or refuse an extension could only be reversed if it exercised its discretion in a non-judicial manner (*Knowler A-445-93; Chartier A-42-90; Plourde A-80-90*).

[9] The Tribunal also examined paragraph 112(1)(b) of the Act and section 1 of the *Reconsideration Request Regulations* stating that the Commission may allow a longer period to make a request for reconsideration of a decision. This wording is similar to that which was found previously in section 114 of the Act. The Tribunal therefore finds that a decision by the Commission pursuant to the *Reconsideration Request Regulations* is a discretionary one.

[10] On that basis, the Tribunal must decide whether the Commission exercised its discretion in a judicial manner when it denied the Appellant's request to extend the 30-day period for reconsideration of its initial decisions. In order to do so, the Tribunal 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-discriminatory manner (*Sirois*, A-600-95, *Knowler* A-445-93; *Chartier*, A-42-90; *Dunham* A-708-95; *Purcell* A-694-94).

[11] The Commission's discretion must be guided by the *Reconsideration Request Regulations* that indicates the criteria to be considered when deciding whether or not to allow the request to extend. Therefore, the Commission must have considered all criteria before making its decision. The criteria are: 1) The Commission must be satisfied that there is a reasonable explanation for the delay, 2) the person must have demonstrated a continuing intention to request a reconsideration. When the request is made more than 365 days after the day on which the decision was communicated to the person, two additional factors must be considered: 1) The Commission must be satisfied that the request for reconsideration has a reasonable chance of success and that 2) no prejudice would be caused to the Commission or a party by allowing a longer period to make the request.

[12] Before analyzing those criteria, the Tribunal finds it necessary to calculate the exact delays and time frames, which requires to identify the important dates correctly. Because Section 112 of the Act states that a Claimant may make a request to the Commission for a reconsideration of a decision they are subject to, within 30 days after the day on which the decision is communicated to them, the Tribunal must determine on what date the decision was communicated to the Appellant (my emphasis).

[13] In the present case, the Appellant argues that he has never received the Commission's decision letter dated March 7<sup>th</sup> 2016 informing his of his disqualification. The Appellant stated that he was home in the winter of 2016-2017 and would have been there to receive the letter. He sees no reason why he would not have received the letter, except for the possibility that there was some confusion with another address on a street called X as he lives on X. He argued that he swore he has never seen that letter. He added that he wholeheartedly rejects the idea that he voluntarily left his employment and that, had he been informed of that conclusion, he would have contested the decision without a doubt.

[14] The Tribunal granted significant weight on the Appellant's testimony as it found it to be logic, consistent and therefore credible. The Appellant has explained in a very clear way that when he had telephone conversations with the Commission, nothing was ever mentioned to him

regarding his voluntary leaving. He said that the discussions always revolved around the fact that he received a generous severance pay that would prevent him from receiving benefits. The Tribunal accepts his testimony that he would have never agreed to be considered as having left his employment voluntarily. He went in great details to explain that his departure from work was related to a workforce adjustment that took place in his workplace and that he would have gladly stayed in his position had he have the chance. He also indicated that at his former workplace, when an employee leaves their employment voluntarily, they are not entitled to a severance pay, which demonstrate once again that he did not leave his job voluntarily. As mentioned earlier, the Tribunal will not address the voluntary leaving of the Appellant, as it is not the issue before it. However, the Tribunal accepted the Appellant's statement because they provide some context. The context provided by the Appellant helped the Tribunal to conclude that he did not receive the Commission's decision letter. The Appellant has convinced the Tribunal that he would have asked for reconsideration in a timely matter if he had received the decision.

[15] The Commission submits that the Appellant was aware of the Commission's decision dated March 7, 2016. It acknowledged the Appellant's position that he had never received the decision but does not address this point in its argument any further than to state that it had not receive any undeliverable mail. Furthermore, the Commission did not provide any evidence that the decision had, indeed been communicated to the Appellant.

[16] The Tribunal finds that the Commission has not been able to contradict in a convincing way the Appellant's version. Therefore, based on the current evidence on file, particularly the Appellant's testimony, the Tribunal finds that the decision dated March 7, 2016, for which the Appellant is seeking reconsideration, was never communicated to him. Therefore, it would be unreasonable and arbitrary to require the Appellant to ask for a reconsideration, within 30 days, of a decision that has never been communicated to him. Based on this finding, the Tribunal concludes that the Commission has not exercised its discretion in a judicial manner. The Commission did not consider all the circumstances to this affair when on the one hand it acknowledged the Appellant's version that he had not received its decision, but on the other hand, it did not explain sufficiently why it rejected this possibility.

[17] Based on this conclusion, it is unnecessary to review the 4 criteria to consider in cases of late requests for reconsideration. The Commission must proceed with the reconsideration process of its decision dated March 7, 2016. The request for reconsideration was not submitted late since the decision to reconsider has not been communicated to/received by the Appellant.

**CONCLUSION**

[18] The appeal is allowed.

Lucie Leduc

Member, General Division - Employment Insurance Section

HEARD ON:	January 17, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. C., Appellant