



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. H. v Canada Employment Insurance Commission*, 2019 SST 269

Tribunal File Number: GE-19-346

BETWEEN:

B. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: February 19, 2019

DATE OF DECISION: March 4, 2019

DECISION

[1] The appeal is dismissed. The Appellant has failed to prove there was a reasonable explanation for the delay or she has demonstrated a continuing intention to request a reconsideration.

OVERVIEW

[2] The Appellant filed an initial claim for employment insurance benefits (EI) on February 1, 2018, and a subsequent claim on April 9, 2018. On April 27, 2018, the Canada Employment Insurance Commission (Respondent) sent the Appellant a letter saying she was being disentitled to benefits effective April 9, 2018, because she failed to prove her availability by not responding to the Respondent's request for information. The letter advised the Appellant that she had 30 days to file a request for reconsideration if she disagreed with the decision. On November 7, 2018, the Appellant filed a request for reconsideration. The Respondent denied the Appellant's request because they determined she had not shown a continuing intention and a reasonable explanation for the delay. The Appellant appealed the decision to the *Social Security Tribunal* (Tribunal).

ISSUE

[3] Was the Appellant's reconsideration request submitted late?

[4] Did the Respondent 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

[5] Where the Respondent has denied an extension of time to request a reconsideration under section 1 of the *Reconsideration Request Regulations* (Reconsideration Regulations), the only question before me is whether they exercised its discretion judicially in refusing the extension of time. The issue of the Appellant's availability is not a question before me. I can only intervene if it is determined that the Respondent did not exercise its discretion judicially.

[6] I must first determine if the Appellant's request for reconsideration was in fact filed late. A claimant can request that the Respondent reconsider a decision within 30 days after the day on which the decision was communicated to the claimant under paragraph 112(1)(a) of the *Employment Insurance Act* (EI Act).

Issue 1: Was the Appellant's Request for Reconsideration submitted late?

[7] Yes, I find that the Appellant filed her request for reconsideration past the 30-day time limit. The Appellant conceded that she did not submit her request for reconsideration within 30 days of the Respondent communicating the decision to her. I find the Appellant delayed 164 days in making her request for reconsideration following the 30-day time limit.

[8] The Respondent has the responsibility to inform the Appellant of decisions about their claim for EI benefits. The burden of proving that the Appellant received the communication lies with the Respondent (*Bartlett v. Canada (Attorney General)*, 2012 FCA 230).

[9] The Appellant conceded that the Respondent verbally advised her of the decision on April 13, 2018, and she received the written decision, dated April 27, 2018, around May 5, 2018. The Appellant submitted a reconsideration request that is dated October 29, 2018, and it received by the Respondent on November 7, 2018, which is over the 30-day timeframe.

Issue 2: Did the Respondent 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?

[10] Yes, I find the Respondent exercised its discretion in a judicial manner in denying the Appellant's request to extend the 30-day period. I find, the Respondent considered the reason for the delay and whether there was a continued intention.

[11] When a request for reconsideration is submitted after the 30-day timeframe, the Respondent has the discretion to decide whether to grant an extension of time to request reconsideration. I will now determine whether the Respondent's decision to deny the Appellant an extension of time to request reconsideration was exercised judicially.

[12] A decision by the Respondent regarding an extension of time to request a reconsideration is discretionary (*Daley v. Canada (Attorney General)*, 2017 FC 297). Therefore, the Respondent's decision can only be varied if the Respondent did not exercise its power judicially (*Canada (Attorney General) v. Knowler*, A-445-95). A discretionary power is not exercised judicially if it can be shown that the decision maker: 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*, 1 FC 644).

[13] To grant an extension of time to request a reconsideration under subsection 1(1) of the Reconsideration Regulations, the Respondent must be satisfied that the following two factors are met before granting the extension:

- a) The Appellant must show that there was a reasonable explanation for the delay in making the request; and
- b) She must demonstrate a continuing intention to request the reconsideration.

[14] Further, if the request is made after the 365-day period after the day on which the decision was communicated to the person, the Respondent must also be satisfied that

- c) the request for reconsideration has a reasonable chance of success; and
- d) no prejudice would be caused to the Commission or a party by allowing a longer period to make the request.

[15] In this case, the delay is 164 days and I will determine the following.

a) Did the Appellant have a reasonable explanation for the delay?

[16] No, the Appellant has not provided a reasonable explanation for the delay. I cannot accept that the Appellant's testimony that she became discouraged and simply gave up supports a reasonable explanation. The Appellant conceded there were no other circumstances that would have prevented her from contacting Service Canada. Especially when she confirmed that, she received the letter prior to the 30-day deadline.

[17] I accept that the Appellant filed her request for reconsideration on November 7, 2018, after she contacted Service Canada regarding a different manner. However, I am not convinced that the Appellant was prevented in any way from being proactive after she received the reconsideration decision letter in or around May 5, 2018, and was still within the 30 days to which she could have made the request.

[18] The Appellant testified that she had received a voice mail from a Service Canada agent around April 10, 2018, who was requesting she provide a job search for the period between February and April 2018. She stated that she returned the call around April 13, 2018, and the person told her account was closed and she should go to the Harry Hays building (Service Canada) and request a reconsideration within 30 days. She stated that she went to Service Canada but nobody knew what form she needed. She stated she called a couple of more times but nobody seemed to know what form she needed.

[19] The Appellant testified that the Respondent's letter was dated April 27, 2018, but she never received it until around May 5th. She stated the letter said she had been disentitled as of April 9th, the 30 days was almost up, and she figured she would not make the 30-day deadline; she was discouraged and just gave up.

b) Has the Appellant demonstrated a continuing intention to request a reconsideration?

[20] No, I find the Appellant has not demonstrated a continuing intention to request a reconsideration. The Appellant conceded that she never attempted to contact Service Canada and request a reconsideration regarding her issue of availability, even after receiving the letter on or about May 5, 2018.

[21] I am satisfied that the Appellant has not demonstrated a continuing attention to request a reconsideration, because she testified that she simply gave up and she only made the request after she contacted Service Canada on a separate matter months later.

[22] The Appellant testified that later in the summer she called Service Canada to enquire if there were any programs to take training. She stated that during the conversation she explained her past EI situation and was advised by the agent that she could try to make a request for reconsideration and possibly be entitled to benefits going back to April. She stated that the agent was not sure if she would be entitled but would send the request for reconsideration forms. The Appellant stated that it was in September she spoke to the agent. She stated that after she got the forms she filed her reconsideration.

[23] I accept the Respondent's information that supports the Appellant has not demonstrated a continuing intention. The Respondent advised the Appellant that the information on the file show she called Service Canada on October 3, 2018, and there was no record of any communication with Service Canada between February and October 3, 2018. The information shows she advised Service Canada on October 3, 2018, of an address change and at that time, she was sent reconsideration forms. Service Canada received the request on November 7, 2018, 164 days past the 30-day time limit.

[24] The Appellant confirmed that from May 5, 2018, until she contacted Service Canada sometime in September 2018, she had not made any further attempts to contact Service Canada. The Appellant confirmed that she received the reconsideration forms and filed them in October 2018.

[25] The Appellant's request for reconsideration is dated October 29, 2018, and Service Canada received it on November 7, 2018. The Appellant indicated she was verbally advised of the decision on April 13, 2018, and the letter was dated April 27, 2018. She confirmed she received the letter around May 5th.

[26] The Appellant stated that she believes she has been treated unfairly because she did everything she was supposed to do. She stated that she was surprised that her account had been closed prematurely. She stated that she was never received any guidance from Service Canada and that she would have been able to provide a job search.

[27] I considered the Appellant's argument, but I do not find the Appellant was treated unfairly, she did everything she was supposed to and she did not receive any support or guidance.

[28] I find from the Appellant's oral testimony, her argument cannot be substantiated. I accept her testimony supports otherwise because she was advised verbally on at least two occasions and then once in writing within the 30-day time limit that she would need to make a request a reconsideration, but she was the one who became discouraged chose to give up.

[29] The issue of the Appellant's availability is not a question before me. I can only intervene if it is determined that the Respondent did not exercise its discretion judicially, which I found was not the case.

CONCLUSION

[30] I conclude that the Appellant's request for an extension of time to the 30-day period to make a request for reconsideration under subsection 112(1) of the EI Act is refused.

[31] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	February 19, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. H., Appellant