



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: J. B. v Canada Employment Insurance Commission, 2019 SST 875

Tribunal File Number: GE-18-3773

BETWEEN:

J. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: February 25, 2019

DATE OF DECISION: March 28, 2019

DECISION

[1] The appeal is allowed. I find that the Appellant's employer made a reconsideration request in the required form and manner. To exercise its authority correctly, the Respondent must respond to this request by performing a reconsideration of its decision on the Appellant's initial claim for benefits.

OVERVIEW

[2] The Appellant (who I refer to as the Claimant) applied for regular benefits but the Respondent (the Commission) denied her benefits. The Claimant challenged this decision in a reconsideration request dated October 13, 2018, which her employer filed on her behalf. The Commission refused to perform a reconsideration, submitting that the employer was not an "interested party" and that the Claimant had not authorized him to act for her.

[3] On December 18, 2018, the Claimant filed an appeal before the Social Security Tribunal (Tribunal). The Commission is arguing that I do not have the jurisdiction to decide this appeal since it never performed a reconsideration. I must now decide whether I have this jurisdiction and if so, whether the Commission exercised its authority correctly under *the Employment Insurance Act* (EI Act) when it refused to perform a reconsideration.

PRELIMINARY MATTERS

[4] On January 18, 2019, in the interests of greater clarity, I asked the Commission for the following information: its initial decision(s); the legislative basis for its refusal to perform a reconsideration; and the dates and records of the conversations it referenced with the Claimant and her employer.¹ On February 1, 2019, the Commission submitted the response that "the Commission will not be providing further information to the Tribunal at this time."

[5] Neither the Claimant nor her representative attended the hearing. On February 20, 2019, the representative confirmed by phone that she had received the Notice of Hearing. I therefore

¹ GD4-2.

proceeded with the hearing, as authorized under subsection 12(1) of the *Social Security Tribunal Regulations*.

ISSUES

[6] **Issue 1: Do I have the jurisdiction to make a decision on this appeal?**

[7] **Issue 2: Did the Commission exercise its authority correctly when it refused to perform a reconsideration?**

ANALYSIS

[8] Under the EI Act, when the Commission makes an initial decision on an application for benefits, the claimant or another person who is the subject of the decision or the claimant's employer may request a reconsideration.² The request must be made in the form and manner prescribed in the *Employment Insurance Regulations* (EI Regulations).³

[9] If the request meets the requirements of these regulations, the Commission must reconsider its initial decision.⁴ A reconsideration decision must be made without delay.⁵ A party who disagrees with a reconsideration decision may file an appeal with the Tribunal.⁶

Issue 1: Do I have the jurisdiction to make a decision on this appeal?

[10] Yes. The Commission asserts that I have no jurisdiction to hear this appeal since it did not make a reconsideration decision, but I find that refusing to perform a reconsideration amounts to a decision. As such, I find that I have the jurisdiction to proceed.

Issue 2: Did the Commission exercise its authority correctly when it refused to perform a reconsideration?

² The request must be made within 30 days after the day on which a decision was communicated to the claimant or any further time that the Commission may allow (subsection 112(1) of the EI Act).

³ Section 78 of the EI Regulations.

⁴ Section 112(2) of the EI Act

⁵ Section 79 of the EI Regulations.

⁶ Section 113 of the EI Act.

[11] No. I find that it did not exercise its authority correctly since it is required to perform a reconsideration if the request is made in the form and manner prescribed in the EI Regulations.

[12] On December 10, 2018, the Claimant filed an appeal with the Tribunal. She included with the appeal her employer's reconsideration request dated October 13, 2018.⁷ In this request, the employer asked for a reconsideration of an initial decision communicated to him around October 15, 2017. His request had followed a retroactive ruling by the CRA on June 11, 2018, on the insurability of the Claimant's employment.⁸

[13] The Claimant submitted in her appeal that she received a reconsideration decision verbally on November 19, 2018, but she did not provide enough details to show that this communication related to an initial decision made in October 2017. The Commission submitted a letter dated November 16, 2018, informing her employer that it could not proceed with his reconsideration request since he did not have the authorization to make it.⁹

[14] I therefore find that the Commission did not perform a reconsideration. It insisted that it never processed the employer's request since he was not an "interested party." However, it did not provide any legislative authority to show that the employer needed to be an "interested party" to request a reconsideration. I find that the wording of the legislation does not include this requirement. The legislation simply states that a "claimant or other person, who is the subject of a decision of the Commission, or the employer of the claimant (*emphasis added*), may make a request to the Commission in the prescribed form and manner for a reconsideration..."¹⁰

[15] The Commission also submitted that it did not perform a reconsideration because the Claimant failed to provide "a formal authorization" for her employer to act as her representative.¹¹ It reported that it had contacted the Claimant and her employer to gather information but had not received this authorization. Again, the Commission did not provide any legislative basis to show that a claimant must give formal authorization before the employer can

⁷ GD2-8 to GD2-9.

⁸ GD2-10.

⁹ GD4-6.

¹⁰ Subsection 112(1) of the EI Act.

¹¹ GD4-2.

request a reconsideration. I find that this requirement is not included in the EI Regulations, which sets out the information that a party must provide to make a reconsideration request.¹²

[16] I find that the employer provided this information and therefore met the requirement to make a reconsideration request in the form and manner prescribed in the EI Regulations. He made the request in writing and included the Claimant's name, address, phone number and social insurance number, as well as his own name and contact information. The Commission confirmed that it received this request on October 29, 2018, so I am satisfied that he sent it by one of the prescribed methods (mail, fax or email) and that the Commission received it.¹³

[17] As required, the employer provided a reason for the request: the annual denial of benefits since early 2015. He also gave the approximate date of the specific decision for which he was requesting a reconsideration: October 15, 2017.

[18] I find that the Commission did not correctly exercise its authority under the EI Act when it refused to perform a reconsideration in response to this request, which met the requirements of the EI Regulations. When a request is properly made, the Commission is obligated to perform a reconsideration and must make its decision without delay.

CONCLUSION

[19] The appeal is allowed.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	February 25, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Neither party attended the hearing.

¹² Section 78 of the EI Regulations.

¹³ GD4-6; GD7-1.