



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. W. v Canada Employment Insurance Commission*, 2019 SST 384

Tribunal File Number: GE-19-788
GE-19-879

BETWEEN:

B. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christopher Pike

HEARD ON: March 25, 2019

DATE OF DECISION: March 29, 2019

DECISION

[1] The Appellant is the Claimant in this decision. The Claimant did not file his reconsideration request late. His appeals are allowed and his reconsideration request may proceed. These reasons explain why.

OVERVIEW

[2] On June 5, 2013, the Claimant applied for and received employment insurance benefits from the Canada Employment Insurance Commission (Commission). On March 30, 2016, the Commission determined that the Claimant had failed to report income he received in October 2013. The Commission established an overpayment claim, reallocated income in two weeks of his claim, and imposed a penalty on the Claimant. As well, the Commission determined that the Claimant voluntarily left his employment on October 19, 2013 and disqualified him from receiving benefits.

[3] On July 24, 2017, the Commission issued a decision under section 112 of the *Employment Insurance Act* declining to reconsider its March 30, 2016 decision because he had missed the 30-day deadline for making the request. The Claimant appealed this decision to the Tribunal.

PRELIMINARY MATTERS

[4] I may hear two appeals together if they involve a common question of law or fact, but I can do that only if doing so will not prejudice others involved in the appeals.¹ The Commission and the Appellant are the only parties to the appeals in Tribunal files GE-19-788 and GE-19-879.

[5] The Claimant's appeals both relate to a claim for benefits which he made in 2013. The appeal in Tribunal file GE-19-788 refers to a reconsideration decision dated September 8, 2018. The appeal in Tribunal file GE-19-879 refers to a reconsideration decision dated July 24, 2017. The Commission submitted that I should heard these two appeals, so it has implicitly said that it will not be prejudiced if I hear these appeals together. As well, the evidence on file satisfies me

¹ Section 13 of the *Social Security Tribunal Regulations* grants this authority to the Tribunal.

that it is appropriate to deal with the Claimant's appeals together because they involve common questions of law and fact.

[6] My authority is limited to hearing appeals of the Commission's reconsideration decisions.² The Commission has not made a reconsideration decision³ about the substance of its March 30, 2016 decision. For that reason, I cannot address the issues that the Claimant has raised about the Commission's March 30, 2016 decision in these reasons.

ISSUES

[7] The Claimant is appealing the Commission's decision to deny his request to extend the 30-day period to make a request for reconsideration of its March 30, 2016 decision. I have to consider:

- a) Whether the Claimant made his reconsideration request late;
- b) And if so, whether the Commission act judicially when it exercised its discretion to refuse the Claimant's reconsideration request;
- c) And if I find that the Commission did not act judicially
 - i) whether the Claimant gave a reasonable explanation for his delayed reconsideration request; and
 - ii) showed a continuing intention to pursue his reconsideration request.

ANALYSIS

[8] A claimant has to ask the Commission to reconsider a decision respecting their claim within 30 days of the Commission communicating it to them.⁴ The Commission may allow a claimant to file their reconsideration request after this 30-day deadline if they show that they

² Section 113 of the *Employment Insurance Act* imposes this limitation.

³ A reconsideration decision is one which the Commission makes under the authority given to it under section 112 of the *Employment Insurance Act*.

⁴ Section 112(1)(a) of the *Employment Insurance Act* creates the 30-day deadline for filing an appeal.

have a reasonable explanation for delaying their request and that they had a continuing intention to request reconsideration throughout the period of delay.⁵

Did the Claimant make his reconsideration request late?

[9] To establish when the 30-day period to file a claimant's appeal begins, the Commission must prove the date on which it communicated its decision to them.⁶ When doing this, the Commission has to unambiguously inform a claimant about the nature and effect of its decision.⁷

[10] At issue in these appeals is the Commission's March 30, 2016 decision in the Claimant's claim. This decision has five elements:

- a) A determination that the Claimant voluntarily left his employment at X on October 13, 2013;
- b) An adjustment to the allocation of the Claimant's earnings for the weeks beginning October 6, 2013 and October 13, 2013;
- c) A determination that the Claimant knowingly made false representations in two reports to claim benefits;
- d) A determination that it would impose a penalty on the Claimant for his misrepresentations; and,
- e) A claim for an overpayment, which would be explained to the Claimant in a Notice of Debt to be sent to him later.

⁵ Section 1(1) of the *Reconsideration Regulations* imposes these requirements.

⁶ *Bartlett v. Canada (Attorney General)*, 2012 FCA 230 found that a decision must be effectively communicated to the affected individual to establish when a deadline to file an appeal runs. *Bartlett* did not involve an employment insurance claim, but the principle applies to decision makers in positions similar to that of the Commission in this appeal. This means *Bartlett* is persuasive authority for the proposition that the Commission had to effectively communicate its decision to the Claimant to start his deadline for filing his appeal.

⁷ *Peace Hills Trust Co. v Moccasin*, 2005 FC 1364 and *Skycharter Ltd. v. Canada (Minister of Transport)*, T-2625-96 explain the requirement for a decision maker to unambiguously inform the affected individual of the nature and effect of its decision. These cases did not involve employment insurance claims, but this principle applies to decision makers in positions similar to that of the Commission in this appeal. This means these cases are persuasive authority for the proposition that the Commission had to unambiguously inform the Claimant of the nature and effect of its decision in order to start the clock running on the time he had to file his appeal.

[11] The Commission states that it issued its notice of decision to the Claimant on March 30, 2016 and asserts that he was aware of it by December 20, 2016. The Commission asserts that the Claimant's reconsideration request was late because he did not make it until June 17, 2017.

[12] The Claimant stated in his reconsideration requests dated June 12, 2017 and August 29, 2018 that the Commission communicated its March 30, 2016 decision to him verbally on November 25, 2016 and in writing on December 20, 2016.

[13] Thus, evidence from both parties shows that the Commission communicated its March 30, 2016 decision to the Claimant verbally on November 25, 2016 and in writing on December 20, 2016. This evidence does not show when the terms of the Notice of Debt were communicated to the Claimant because those terms were not set out in the March 30, 2016 decision.

[14] The Commission filed with the Tribunal an "Attestation Certificate" dated February 6, 2019 setting out details of a "Notice of Debt" that it sent to the Claimant on April 2, 2016. The Commission tendered this document as evidence that the Claimant received the Notice of Debt.⁸ The Commission did not state in the Attestation Certificate the address to which it sent the Notice of Debt.

[15] The Claimant testified that he lived in X, British Columbia when he applied for benefits in 2013 and moved to Calgary, Alberta in 2015. He also testified that he reported this change of address to the Commission. Despite this, the Commission sent its March 30, 2016 decision to the Claimant's old address in X.

[16] On July 24, 2017 the Commission noted in its file that the Claimant had not responded to the July 13, 2017 request. The Commission then issued its July 24, 2017 letter declining to consider the Claimant's June 12, 2017 reconsideration request. Even though the Claimant gave the Commission his Calgary address in the reconsideration request, the Commission also sent its July 24, 2017 decision to the Claimant's old address in X.

[17] The Claimant filed a second reconsideration request on August 29, 2018 from his Calgary address. He stated in that request that he had verbally received the decision he wanted the

⁸ Section 134(2) *Employment Insurance Act* says that I may assume that a claimant received a document mailed to them "in the ordinary course of the mails".

Commission to reconsider on November 25, 2016. He also stated that he received the decision in writing on December 20, 2016. The Commission responded to the Claimant's second reconsideration request on September 12, 2018 in a letter addressed to the Claimant's Calgary address.

[18] The Commission's file shows no verbal or written communication between it and the Claimant between July 24, 2017 and August 29, 2018. The information provided by the Claimant likewise shows no communication between him and the Commission between these dates.

[19] This evidence shows that all correspondence that the Commission sent the Claimant's mail to his old address in X from March 30, 2016 until it issued its September 12, 2018 letter to him.

[20] While the *Employment Insurance Act* requires me to accept the Attestation Certificate as evidence that the Notice of Debt was delivered to the Claimant, I do not have to accept the certificate as proof of delivery if the document was not sent to his correct address.⁹ Considering the evidence of the postal addresses used (and not used) by the Commission for its communication with the Claimant from March 30, 2016 until it issued its September 12, 2018 letter, I find it is more probable than not that the Commission sent its Notice of Debt to the Claimant's old address in X on April 2, 2016. I therefore find that the Notice of Debt was not delivered to the Claimant in the ordinary course of the mails in 2016.

[21] The Claimant testified that his wages were garnished in 2016 and that he was initially informed that the garnishment related to a disallowed income tax deduction. He testified that his employer made the last deduction from his pay under the garnishment on July 7, 2017. He also testified that he learned about a month before the garnishment expired that it actually related to the overpayment claim that the Commission established as a part of its March 30, 2016 decision. He testified that he did not understand the financial consequences of the Commission's March 30, 2016, decision until he learned that the 2016 garnishment of his wages related to his 2013 employment insurance claim.

⁹ *Brière v Canada Employment Insurance Commission*, [1989] 3 F.C. 88 establishes this interpretation of section 134(2) of the *Employment Insurance Act*.

[22] The Claimant was not able to establish the exact date that he learned the true nature of the garnishment of his wages; he could only say that it was in early June 2017.

[23] The Commission has to prove that it unambiguously communicated the nature and effect of its decision to the Claimant. The Commission's March 30, 2016 decision letter did not communicate to the Claimant the amount of its overpayment claim or the payment terms it intended to impose. The Claimant's testimony shows his wages were garnished during the summer of 2016 to pay the Commission's overpayment claim but he did not learn that this was the purpose of the garnishment until early June 2017.

[24] The parties agree that the Claimant filed the request for the Commission to reconsider its March 30, 2016 decision (the decision which the Commission declined to act on) on June 12, 2017. I find that the evidence shows that the Claimant learned the full nature and effect of the Commission's March 30, 2016 decision only when he learned that the garnishment of his wages related to his 2013 employment insurance claim. I find that the Claimant learned the true nature of the garnishment of his wages no earlier than June 1, 2017 and no later than June 11, 2017.

[25] Given that the Claimant filed his reconsideration request on June 12, 2017, I find that he made his reconsideration request within 30 days of learning the entire nature and effect of the Commission's March 30, 2016 decision. I therefore find that the Claimant's reconsideration request was not filed late.

Did Commission act judicially when it exercised its discretion to refuse the Claimant's reconsideration request?

[26] As I have determined the Claimant did not file his reconsideration request late, I do not have to consider whether the Commission acted judicially when it exercised its discretion to refuse the Claimant's reconsideration request.

CONCLUSION

[27] The appeal is allowed.

Christopher Pike
Member, General Division - Employment Insurance Section

HEARD ON:	March 25, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. W., Appellant