



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *P. V. v Canada Employment Insurance Commission*, 2019 SST 463

Tribunal File Numbers: GE-18-3522  
GE-19-1405  
GE-19-1406  
GE-19-1407  
GE-19-1408  
GE-19-1409

BETWEEN:

**P. V.**

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: Charline Bourque

HEARD ON: ~~April 9, 2019~~

**CORRIGENDUM DATE: April 12, 2019**

DATE OF DECISION: April 10, 2019

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] On February 13, 2012; November 23, 2012; December 19, 2012; and January 30, 2013; the Commission made several decisions on the Appellant's files concerning voluntary leaving (GE-18-3522 and GE-19-1408), undeclared earnings (GE-19-1405, GE-19-1407, and GE-19-1409), an unestablished benefit period (GE-19-1406), a warning (GE-19-1407), and penalties and a notice of violation (GE-18-3522, GE-19-1405, and GE-19-1409).

[3] The Appellant had 30 days to request a reconsideration of those decisions. The Appellant requested a reconsideration of those decisions on September 11, 2018.

[4] On October 11, 2018, the Commission informed the Appellant that it reviewed the reasons that he provided for his delay in requesting a reconsideration, but it determined that those reasons do not meet the requirements of the *Reconsideration Request Regulations*. Therefore, the Commission informed the Appellant that it would not reconsider the decisions.

[5] The Tribunal must determine whether the Commission's refusal to extend the 30-day period to make a request for reconsideration is justified. However, the Tribunal has no jurisdiction to amend such a decision unless the Commission failed to exercise its discretion judicially.

## **PRELIMINARY MATTERS**

[6] The Tribunal joined the appeals (files GE-18-3522, GE-19-1405, GE-19-1406, GE-19-1407, GE-19-1408, and GE-19-1409) in accordance with section 13 of the *Social Security Tribunal Regulations* since a common question of law or fact arises in the appeals and because no injustice is likely to be caused to any party to the appeals.

[7] Furthermore, the Tribunal clarifies that its role is limited to determining whether the Commission exercised its discretion judicially, in accordance with section 112 of the

*Employment Insurance Act* (EI Act) and section 1 of the *Reconsideration Request Regulations*, when it dismissed the Appellant's request to extend the 30-day period to make a request for reconsideration (*Sirois*, A-600-95; *Chartier*, A-42-90). The Tribunal does not have to consider the issues regarding the voluntary leaving, undeclared earnings, warning, and penalties and notice of violation.

## ISSUES

[8] Was the Appellant's reconsideration request made after the 30-day time limit set out in the Act?

[9] Did the Commission exercise its discretion judicially when it refused to extend the 30-day time limit for reconsideration?

## ANALYSIS

### **Issue 1: Was the Appellant's reconsideration request made after the 30-day time limit set out in the Act?**

[10] The Tribunal is of the view that the request for reconsideration was made more than 365 days late, which is after the 30-day time limit set out in the *Employment Insurance Act*.

[11] A claimant may request a reconsideration of a decision within 30 days after the day on which the decision was communicated to them (section 112 of the EI Act) or within any further time that the Commission may allow under the conditions of the *Reconsideration Request Regulations*.

[12] The Commission made decisions concerning voluntary leaving (GE-18-3522 and GE-19-1408), undeclared earnings (GE-19-1405, GE-19-1407, and GE-19-1409), an unestablished benefit period (GE-19-1406), a warning (GE-19-1407), and penalties and a notice of violation (GE-18-3522, GE-19-1405, and GE-19-1409) on February 13, 2012; November 23, 2012; December 19, 2012; and January 30, 2013. Service Canada received the request for reconsideration on September 11, 2018.

[13] At the hearing, the Appellant indicated that he did not receive the notices of decision from the Commission. He explained that he has moved several times and has faced different difficult situations. He indicated that his former spouse defrauded him in the file and that he did not receive the benefits claimed. Furthermore, he went through a period of drinking and indicated that he has been sober for two years, has been getting his life back on track, and has been doing everything necessary to recover. However, he stated that he has worked for an employer for about six years and that that is how he discovered that he had a debt to repay to the Government of Canada. His employer garnished his pay to repay that debt. Because of this, the Appellant contacted the Canada Revenue Agency to make repayment arrangements.

[14] The Commission in turn indicates that the Appellant was aware of the debt. The Commission found that the Claimant did not give a reasonable explanation for making his request for reconsideration late. He indicates that he had no medical, family, or other impediment (GD-22) justifying his late request for reconsideration. The Commission considers that the Claimant moved and was the victim of a fire. On the other hand, the Claimant acknowledges that he talked about the debt with the Canada Revenue Agency (GD3-22) and took no steps, even though his wages were being garnished. He has not demonstrated a continuing intention to deal with his file with the Employment Insurance Commission.

[15] The Tribunal notes that the Appellant confirms that he was aware of the debt for about six years through his employer who garnished his wages. As a result, the Tribunal finds that the Appellant was aware of a debt from the beginning of his employment for about six years.

[16] Therefore, the Tribunal is of the view that the Appellant made his request for reconsideration more than 365 days late, which is after the 30-day time limit set out in the Act. The Appellant requested a reconsideration of the decisions more than five years late.

**Issue 2: Did the Commission exercise its discretion judicially?**

[17] The Tribunal is of the view that the Commission exercised its discretion judicially because it acted in good faith and considered all the relevant circumstances in the file, while disregarding irrelevant aspects, when it refused to extend the time for requesting a reconsideration of a decision.

[18] The Commission may allow a longer period to make a request for reconsideration of a decision “if the Commission is satisfied that there is a reasonable explanation for requesting a longer period” and the person “has demonstrated a continuing intention to request a reconsideration” (section 1(1) of the *Employment Insurance Regulations* (EI Regulations) [*sic*]).

[19] Furthermore, because the Appellant made his request for reconsideration more than 365 days late, the Commission must also be satisfied that the request for reconsideration has a reasonable chance of success and that no prejudice would be caused to any party (section 1(2) of the EI Regulations [*sic*]).

[20] Case law has confirmed that the Commission’s decision whether to allow an extension of time to request a reconsideration is discretionary (*Daley v Canada (Attorney General)*, 2017 FC 297).

[21] The Federal Court of Appeal has established that discretionary decisions of the Commission should not be disturbed unless it can be shown that it failed to exercise its discretion in a judicial manner—that is, acting in good faith, having regard to all the relevant factors and ignoring any irrelevant factors (*Chartier v Canada (Canada Employment and Immigration Commission)*, 1990 FCA A-42-90; *Canada (Attorney General) v Uppal*, 2008 FCA 388).

[22] In other words, the Tribunal is not entitled to substitute its opinion for that of the Commission. It must instead determine whether the Commission acted in good faith, considered all the relevant factors, while disregarding irrelevant factors, and acted with a proper motive and in a non-discriminatory manner when it made its decision (*Canada (Attorney General) v Purcell*, [1996] 1 FC 644).

[23] The Tribunal must determine whether the Commission exercised its discretion judicially when it refused to extend the 30-day time limit to make a request for reconsideration of its initial decision. If the Tribunal is of the view that the Commission exercised its discretion judicially, it will not grant the Appellant the extension of time to make a request for reconsideration. However, if the Tribunal is of the view that the Commission did not exercise its discretion judicially, it will be able to grant the Appellant the extension of time to make a request for reconsideration, and the Commission will therefore reconsider the initial decision made.

[24] The Tribunal notes that the Appellant made his request for reconsideration more than 365 days after the decision about his Employment Insurance claim was made.

[25] The Appellant indicates that he never received the notices of decision from the Commission. However, he states that he was aware of the debt because of the deductions made by his employer from his pay. He has worked for that employer for about six years. He explains that he was the victim of fraud committed by his former spouse, who made the reports on his behalf. He adds that he has never received Employment Insurance benefits. Furthermore, he explains that he was in a particularly difficult situation. His apartment burned down, and he went through a period of drinking. He adds that he has been sober for two years and wants a fresh start. He is of the view that he does not have to repay a debt for a sum that he did not receive and that he does not deserve this.

[26] The Tribunal notes that the Commission considered the factors indicated in sections 1(1) and 1(2) of the *Reconsideration Request Regulations*. The Commission states that the Claimant has not given any reasonable explanation for making his request for reconsideration late. He states that he had no medical, family, or other impediment justifying his late request for reconsideration. The Commission considers that the Claimant moved and was the victim of a fire. On the other hand, he acknowledges that he talked about the debt with the Canada Revenue Agency and took no steps, even though his wages were being garnished. He has not demonstrated a continuing intention to deal with his file with the Employment Insurance Commission.

[27] Furthermore, the Commission indicates that it is not satisfied that the Claimant's request for reconsideration has any reasonable chance of success. His request concerns instances of undeclared voluntary leaving, undeclared earnings, and a refusal to grant benefits because of a past violation. The Commission also found that authorizing a longer period to make the request would prejudice the Commission because the Claimant acknowledged that he was informed about his debt more than 30 days earlier and failed to take action in the legislated time limits and does not have a reasonable explanation for why he failed to do so.

[28] The Tribunal notes that, at the hearing, the Appellant did not raise any circumstances that had not been before the Commission when it made the decision not to extend the time to make a request for reconsideration. The Commission considered that the Appellant stated that he did not receive the decision, that he moved several times, and that he was the victim of a fire and of fraud committed by his former spouse.

[29] Furthermore, the Tribunal must consider that the Appellant was aware of the debt because he knew that his wages were being garnished. The Tribunal is therefore of the view that the Commission considered the Appellant's grounds.

[30] The Tribunal understands the Appellant's difficulties, the events experienced, and his determination to recover, as well as the difficulties that repaying the debt means for the Appellant and his family, but the Tribunal cannot deviate from the Act.

[31] The Tribunal has no jurisdiction to refuse to apply the law, and the Court cannot refuse to apply the law (*Wegener v Canada (Attorney General)*, 2011 FC 137).

[32] The Tribunal is of the view that the Commission acted in good faith and considered all the relevant circumstances in the file, while disregarding irrelevant aspects, when it refused to extend the time for requesting a reconsideration of a decision. The Tribunal is of the view that the Commission exercised its discretion judicially when it refused to extend the time for requesting a reconsideration of the decision. The Tribunal is of the view that it cannot therefore intervene.

**CONCLUSION**

[33] ~~The appeal is allowed.~~ **The appeal is dismissed.**

*Charline Bourque*  
Member, General Division – Employment Insurance Section

HEARD ON:	April 9, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. V., Appellant