



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. F. v Canada Employment Insurance Commission*, 2019 SST 381

Tribunal File Number: AD-19-127

BETWEEN:

R. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: April 26, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, R. F. (Claimant), submitted an initial claim for regular Employment Insurance (EI) benefits on September 18, 2014. On November 12, 2014, the Commission sent the Claimant a letter stating that he was not entitled to regular EI benefits because he voluntarily left his employment without just cause and he had 30 days to request reconsideration of this decision.

[3] The Claimant submitted a request for reconsideration to the Commission on September 16, 2016. The Commission informed the Claimant on October 12, 2016, that it declined to reconsider the decision because the Claimant had failed to request reconsideration within the required 30-day period.

[4] The General Division found that the Commission exercised its discretion judicially when denying the Claimant an extension of time to submit his reconsideration request.

[5] The Appeal Division granted leave to appeal. The Claimant submits that the General Division did not consider all the facts in deciding if the Commission had exercised its discretion judicially. He submits that the General Division erred in determining that the Commission had applied judicially section 112(1) (b) of the *Employment Insurance Act*.

[6] The Tribunal must decide whether the General Division erred in concluding that the Commission had applied judicially section 112(1) (b) of the EI Act.

[7] The Tribunal dismisses the appeal.

ISSUE

Did the General Division err in concluding that the Commission had exercised its discretion judicially under section 112(1) (b) of the EI Act?

ANALYSIS

Appeal Division's mandate

[8] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.²

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Issue: Did the General Division err in concluding that the Commission had exercised its discretion judicially under section 112(1) (b) of the EI Act?

[11] The Claimant submits that the General Division did not consider all the facts in deciding if the Commission had exercised its discretion judicially. He submits that the General Division erred in concluding that the Commission had applied judicially section 112(1) (b) of the EI Act.

¹ *Canada (Attorney general) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney general)*, 2015 FCA 274.

² *Idem*.

[12] The General Division had to decide whether the Commission exercised its discretion in a judicial manner under section 112 (1) (b) of the EI Act when it denied the Claimant's request to extend the 30-day reconsideration period.

[13] The General Division found that the Claimant was informed on June 16, 2015, of the Commission's decision dated November 12, 2014, and that he chose not to pursue EI benefits because he felt that the Workers' Compensation Board (WCB) would approve his claim. It was only when his WCB claim was denied that the Claimant filed his request for reconsideration on September 16, 2016.³

[14] The General Division found that there was no evidence that the Commission acted in bad faith or that it acted for an improper purpose or motive. It found that the Commission did not ignore a relevant factor or consider an irrelevant factor or that it acted in a discriminatory manner when determining that the Claimant had not provided a reasonable explanation for the delay of 458 days before he submitted his request for reconsideration. The General Division also found that the Claimant did not prove he had a continuing intention to request reconsideration.

[15] The General Division, after reviewing the evidence of the Claimant, determined that the Commission had properly exercised its discretion under section 112 of the EI Act when it determined that the Claimant did not have a reasonable explanation for the delay in making the request for reconsideration and that he did not demonstrate a continuing intention to request the reconsideration.

[16] The evidence clearly shows that the Claimant made the choice not to pursue EI benefits because he felt that the WCB would approve his claim. He had therefore decided from the beginning not to pursue the reconsideration of the Commission's decision.

[17] The Tribunal finds that there is no evidence to support the grounds of appeal invoked by the Appellant or any other possible ground of appeal. The General Division decision is supported by the facts and complies with the law and the decided cases.

³ GD3-33.

[18] For the above-mentioned reasons, the appeal is dismissed.

CONCLUSION

[19] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	R. F., Appellant Isabelle Thiffault, Respondent