



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. T. v Canada Employment Insurance Commission*, 2019 SST 561

Tribunal File Number: GE-19-1436

BETWEEN:

J. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: April 25, 2019

DATE OF DECISION: May 7, 2019

DECISION

[1] The appeal is allowed. The Canada Employment Insurance Commission (Commission) must reconsider its initial decision because the Appellant, J. T. (Claimant), made his request for reconsideration within the 30-day time limit.

OVERVIEW

[2] The Commission approved the Claimant for a maximum of 20 weeks of regular employment insurance benefits under the *Employment Insurance Act* (Act). Shortly after his weeks of entitlement ended in January 2019, the Claimant asked the Commission to reconsider their decision that the maximum number of weeks he could be paid was 20 weeks.

[3] The Commission refused to reconsider their decision on his weeks of entitlement because they stated that he had not made the request within the 30-day time limit.

[4] I must decide if the Claimant made his request within the 30-day period, and if not, if the Commission properly exercised their discretion when they decided not to allow him a longer period to ask for a reconsideration.

PRELIMINARY MATTERS

[5] At the hearing, the Claimant confirmed that he was not appealing the Commission's refusal to reconsider his disentanglement from September 3, 2018, to September 7, 2018. I note that the Claimant did not include this issue in his request for reconsideration.

ISSUES

[6] Did the Claimant request a reconsideration decision within the 30-day time limit?

[7] If not, did the Commission exercise their discretion properly when they decided not to give the Claimant more time to ask for a reconsideration?

ANALYSIS

[8] A claimant has 30 days from the date the Commission communicates their initial decision to him or her to ask the Commission to reconsider their decision.¹

[9] If a claimant does not ask the Commission for a reconsideration decision within 30 days, the Commission may allow more time if they are satisfied that certain conditions have been met.² This is a discretionary decision.³

[10] I can only interfere with the Commission's discretionary decisions if the Commission did not act properly when they made their decision. It is up to the Commission to prove that they acted properly. This is called "acting judicially." This means that they acted in good faith, considering all relevant factors, and ignoring any irrelevant factors.⁴

Did the Claimant ask the Commission to reconsider their decision within the 30-day time limit?

[11] Yes. I find that the Claimant asked for a reconsideration within 30 days from when the decision was communicated to him.

[12] The onus is on the Commission to show when the decision was effectively communicated to the Claimant, as this is the starting point from when the Claimant could ask for a reconsideration. The Claimant does not have the burden of disproving receipt of the decision.⁵

[13] In his February 21, 2019 request for reconsideration, the Claimant stated that the decision was verbally communicated to him on February 8, 2019.

[14] I find that the Commission has not proven that their decision on his maximum number of weeks of entitlement was communicated to the Claimant before February 8, 2019.

¹ This is set out in s 112(1)(a) of the Act.

² S 112(1)(b) and s 112(3) of the Act allow for the extension of time, and the criteria are set out in s 1 of the *Reconsideration Request Regulations*.

³ *Daley v Canada (Attorney General)*, 2017 FC 297.

⁴ *Canada (Attorney General) v Uppal*, 2008 FCA 388.

⁵ These rules are found in the decision of the Federal Court of Appeal in the case of *Bartlett v Canada (Attorney General)*, 2012 FCA 230.

[15] The Commission did not provide the Tribunal with any documentary evidence that shows that they notified the Claimant of his weeks of entitlement before their telephone conversation with him on March 9, 2019.

[16] In their Record of Decision at page GD3-20, the Commission states that they communicated their initial decision to the Claimant on September 12, 2018. However, there is no other evidence in the file of any communication with the Claimant on September 12, 2018, that supports this statement.

[17] In their written submissions, the Commission states that the evidence on file, including the Claimant's own statements "supports that he was aware of the Commission's decision regarding his entitlement to 20 weeks of benefits" when the Commission called him on September 28, 2018.

[18] However, there is no indication in the Commission's notes from their telephone conversation with the Claimant on September 28, 2018, that they discussed his weeks of entitlement. From the notes, the only issue discussed was the Claimant's availability before his training was approved.

[19] The Commission's letter to the Claimant dated September 28, 2018, does not mention his weeks of entitlement.

[20] The Commission's notes of March 9, 2019, of a telephone conversation with the Claimant state that the Claimant confirmed that he was aware that he was entitled to 20 weeks of benefits, but only realized he could have gotten more when he went to file his biweekly report and noted that his claim had ended. I asked the Claimant about this statement during the hearing. The Claimant stated that he became aware that he had 20 weeks of benefits when he went online to complete his biweekly report and the computer notified him that his claim had ended.

[21] I find that his statement to the Commission does not prove that he was aware of his maximum weeks of entitlement in September, as suggested by the Commission. Since the Claimant made the statement in March, a month after he stated he became aware of his maximum weeks of entitlement, his statement could equally mean that he was aware before the

call, or as early as September. Therefore, his statement does not prove that he was aware of his weeks of entitlement in September.

[22] I find that the Claimant became aware of his weeks of entitlement on February 8, 2019, the date he indicated on his request for reconsideration. The Commission has not provided any compelling evidence to show that the Claimant became aware of their decision on his maximum number of weeks of entitlement before that date.

[23] Since the decision on the maximum number of weeks of entitlement was communicated to the Claimant on February 8, 2019, he had until Monday, March 11, 2019, to request a reconsideration.

[24] It is undisputed that the Claimant requested a reconsideration on February 21, 2019.

[25] Since February 21, 2019, is within 30 days of February 8, 2019, the Claimant requested a reconsideration within the 30-day limit. As such, the Commission must reconsider their initial decision on the maximum number of weeks of entitlement.

[26] There is no need for me to consider whether the Commission acted judicially in deciding whether to allow an extension of time, as no extension is required.

CONCLUSION

[27] The appeal is allowed. The Commission must reconsider its initial decision.

Angela Ryan Bourgeois

Member, General Division - Employment Insurance Section

HEARD ON:	April 25, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. T., Appellant