



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. M. v Canada Employment Insurance Commission*, 2019 SST 873

Tribunal File Number: GE-19-2013

BETWEEN:

C. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

HEARD ON: June 10, 2019

DATE OF DECISION: June 13, 2019

DECISION

[1] The appeal is dismissed. The Appellant has not proven that the Commission failed to exercise its discretion in a judicial manner when it denied her request to extend the time for reconsideration of the October 16, 2018 decision.

OVERVIEW

[2] The Appellant established a claim for employment insurance benefits (EI benefits) effective September 2, 2018. By letter dated October 16, 2018, the Respondent, the Canada Employment Insurance Commission (Commission) advised the Appellant that she was disqualified from receipt of EI benefits because she voluntarily left her employment on August 31, 2018 without just cause; and that she was disentitled to EI benefits between September 3, 2018 to October 5, 2018 for failing to prove her availability for work during this period. The October 16, 2018 decision letter included a statement that the Appellant would have to work the minimum number of insurable hours of employment after voluntarily leaving her employment in order to receive EI benefits. The Appellant took no steps in response to the October 16, 2018 disqualification decision. When the Appellant filed a renewal claim on January 9, 2019, she was advised she could not receive EI benefits because she had not worked the required number of hours since voluntarily leaving her job on August 31, 2018 without just cause.

[3] On February 26, 2019, the Appellant filed a Request for Reconsideration of the October 16, 2018 disqualification decision. The Commission determined the Appellant did not have good cause for the delay of 98 days in making her request for reconsideration and, therefore, no reconsideration would be performed. The Appellant appealed the Commission's denial of her request to extend the time for reconsideration to the Social Security Tribunal (Tribunal).

PRELIMINARY MATTERS

[4] The Appellant did not attend the hearing of her appeal. The Tribunal waited 30 minutes beyond the scheduled time for the hearing via teleconference, but the Appellant never joined the call. The Member then proceeded with the hearing in the absence of the Appellant in accordance with section 12 of the *Social Security Tribunal Regulations*. The Member was satisfied the Appellant received the Notice of Hearing, which was sent to her by E-mail on May 27, 2019.

The Appellant authorized the Tribunal to communicate with her by E-mail in her Notice of Appeal (at GD2-1). The Notice of Hearing was sent to the E-mail address she provided and the Tribunal has not received notice of any delivery failure in connection with that E-mail address. The Tribunal was therefore satisfied the Notice of Hearing was delivered to the Appellant by E-mail on May 27, 2019.

ISSUE

[5] Should the Appellant's request to extend the 30-day period for reconsideration of the October 16, 2018 decision be denied?

ANALYSIS

[6] Section 112 of the *Employment Insurance Act* (EI Act) provides that a claimant may ask the Commission to reconsider its initial decision, but they must do so within 30 days of that decision being communicated to them. Section 1 of the *Reconsideration Request Regulations* sets out the requirements that must be met in order to obtain an extension of time beyond the 30-days to seek reconsideration under paragraph 112(1)(b) of the EI Act. Where a request for reconsideration is submitted more than 30 days after the original decision was communicated, the Commission may allow a longer period to ask for a reconsideration only if it is satisfied that:

- a) there is a reasonable explanation for requesting the longer period; and
- b) the Appellant has demonstrated a continuing intention to request reconsideration.

[7] A decision by the Commission pursuant to the *Reconsideration Request Regulations* is a discretionary one. As such, it may only be interfered with if the Commission failed to exercise its discretion in a judicial manner. That is, if the Commission failed to act in good faith, or for proper purpose and motive, or failed to take into account any relevant factors, ignored any irrelevant factors, or otherwise acted in a discriminating manner (*Dunham A-708-95, Purcell A-694-94*).

Issue 1: When was the October 16, 2018 decision communicated to the Appellant?

[8] The Tribunal accepts the Appellant's evidence that the October 16, 2018 disqualification decision was communicated to her on October 16, 2018 (GD3-29 and GD3-58 to GD3-62).

Issue 2: Did the Appellant satisfy the test for allowing a longer period to make a request for reconsideration.

[9] The Tribunal notes the Commission's decision of October 16, 2018 – namely that she was disqualified from receipt of EI benefits because she voluntarily left her employment without just cause, and was disentitled for failing to prove her availability for work – is not the issue before the Tribunal on this appeal. Rather, the Tribunal must decide whether the Appellant's request to extend the 30-day period for reconsideration of that decision should be denied.

[10] In the present case, since the Appellant submitted her request for reconsideration less than 365 days after the October 16, 2018 decision was communicated to her, the Commission may allow a longer period to request reconsideration only if it is satisfied that:

- (a) there is a reasonable explanation for requesting the longer period; and
- (b) the Appellant has demonstrated a continuing intention to request reconsideration.

[11] The Appellant's evidence to the Commission was that she did not understand that the October 16, 2018 decision meant she would be unable to use her hours of insurable employment from prior to the disqualification to establish a subsequent claim for EI benefits. The Appellant confirmed she was told she had 30 days to request a reconsideration of the October 16, 2018 decision, but was never told how the decision affected her hours of employment (GD3-64). The Appellant stated she did not feel the need to request a reconsideration or follow-up on anything because she was contacted about a new job shortly thereafter and started her training on October 26, 2018 (GD3-60 and GD3-64). That job was seasonal and, once her contract was over, she applied for EI benefits again. When she was told she did not qualify because the hours from her previous employment had to be disregarded, she took steps to request a reconsideration of October 16, 2018 decision (GD3-65).

[12] The Tribunal finds that the Appellant has not satisfied the two (2) factors because:

- a) The Appellant submits that her delay was due to the failure of the Commission's agents to explicitly advise her that she would not be able to use the hours of insurable employment accumulated prior to the disqualification to establish a subsequent claim for

EI benefits. Although this information is contained in the October 16, 2018 decision letter itself, the Appellant took no steps to contact Service Canada for clarification about the decision letter – even though she was aware that she had 30 days to ask the Commission to reconsider if she disagreed with it. The Appellant chose to ignore the statement in the October 16, 2018 decision letter about her need to work additional insurable hours and, instead, proceeded on the basis of her own assumption: namely that she would only need to file a new claim if she wished to receive EI benefits at a later date. She took no further steps with respect to the disqualification and disentitlement decisions on her claim. The Tribunal agrees with the Commission that it was not reasonable for the Appellant to do so. Even though the Appellant found work shortly thereafter, there was nothing preventing the Appellant from contacting the Commission for clarification or filing a timely Request for Reconsideration. The Tribunal therefore finds that the Appellant has not provided a reasonable explanation for her delay in requesting a reconsideration.

- b) The Appellant has not demonstrated a continuing intention to request a reconsideration because she, in fact, had no intention to do so because she found another job quickly after being disqualified from receipt of EI benefits on October 16, 2018. If the Appellant disagreed with either the disqualification for voluntarily leaving without just cause or the disentitlement for failing to prove her availability for work, it was incumbent on her to at least follow-up with the Commission and request a reconsideration. This is the case regardless of whether the Appellant understood the impact of the disqualification on her hours of insurable employment. The Appellant took no such steps and instead made a conscious decision not to take the matter further. The Tribunal therefore finds that the Appellant failed to demonstrate a continuing intention to request a reconsideration.

[13] Both of the two (2) factors in section 1 of the *Reconsideration Request Regulations* must be satisfied in order for the Appellant to be granted an extension of time to request a reconsideration of the October 16, 2018 decision. The Tribunal finds the Appellant has not satisfied both factors and, therefore, cannot be granted an extension of time.

Issue 3: Did the Commission exercise its discretion in a judicial manner when it denied the Appellant's request to extend the time for requesting a reconsideration?

[14] The Tribunal must decide if the Commission exercised its discretion in a judicial manner when it denied the Appellant's request to extend the 30-day period for reconsideration of the October 16, 2018 decision. To do this, the Tribunal must consider whether the Commission acted in good faith, for proper purpose and motive, took into account any relevant factors, ignored any irrelevant factors and acted in a non-discriminating manner (*Dunham, supra, Purcell supra*).

[15] In the present case, the Tribunal finds no reason to interfere with the Commission's decision.

[16] The Commission considered both of the factors in section 1 of the *Reconsideration Request Regulations* and concluded the Appellant satisfied neither of them (see Record of Decision at GD3-68 to GD3-69). The Appellant's argument that she should have been explicitly told by the Commission that the disqualification meant she would lose all of the hours of insurable employment she accumulated at the job she voluntarily left without just cause, does not negate the clear instructions in the October 16, 2018 decision letter about the 30-day timeframe for requesting a reconsideration.

[17] The fact that, some four (4) months after the decision was communicated to her, the Appellant was unable to renew her prior claim for EI benefits is irrelevant to the analysis to be undertaken to decide whether to extend the 30-day period for reconsideration. This does not provide either a reasonable explanation for the Appellant's delay in requesting a reconsideration or demonstrate a continuing intention to request a reconsideration. If the Appellant disagreed with the October 16, 2018 decision on her claim, it was open to her to take steps to have it reconsidered. She did not do so.

CONCLUSION

[18] The Tribunal finds that the Commission acted in good faith, considered all the relevant factors and did not consider any irrelevant factors when it denied the Appellant's request to extend the 30-day period for reconsideration of its October 16, 2018 decision pursuant to section

112 of the EI Act and subsection 1(1) of the *Reconsideration Request Regulations*. The Tribunal finds that the Commission exercised its discretion in a judicial manner and, therefore, cannot alter this decision.

[19] The appeal is dismissed.

Teresa M. Day

Member, General Division - Employment Insurance Section

HEARD ON:	June 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	