



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. C. v Canada Employment Insurance Commission*, 2019 SST 887

Tribunal File Number: GE-19-1261

BETWEEN:

K. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: June 11, 2019

DATE OF DECISION: June 26, 2019

DECISION

[1] I am dismissing the appeal.

OVERVIEW

[2] The Claimant stopped working and applied for employment insurance benefits. The Canada Employment Insurance Commission (Commission) decided that he could not get benefits because of the reason he stopped working. The Commission made this decision in June 2017. The Claimant asked the Commission to review its decision about seven months later, in January 2018. The Commission decided that the Claimant asked for the review too late and refused to review its decision. The Claimant appealed to the Tribunal.

[3] I find that the Claimant asked for the review, or reconsideration, more than 30 days after he learned about the Commission's decision. The Claimant was late. The Commission made its decision to refuse the late reconsideration request fairly. I must respect the Commission's decision and so I must dismiss the Claimant's appeal.

PRELIMINARY MATTERS

[4] The Claimant's appeal to the Tribunal was late. The General Division refused the late appeal and the Claimant appealed the refusal to the Appeal Division. The Appeal Division made a decision on the merits and allowed the appeal. The Appeal Division returned the matter to the General Division. I interpret the Appeal Division's decision to mean that the Appeal Division determined that it would be in the interest of justice to accept the late appeal. In other words, the Appeal Division allowed the late appeal. As a result, I will make a decision on the merits of the appeal – the delayed reconsideration request – and I will not consider the late appeal issue.

[5] Tribunal staff have made many attempts to contact the Claimant. Tribunal staff have phoned the Appellant, but the phone number on his notice of appeal is not in service. Tribunal staff have sent emails to the Gmail email address included on his notice of appeal, and the Hotmail email address in his evidence. The Claimant has not responded to these emails. Tribunal staff mailed a notice of hearing along with a letter asking the Claimant to update his phone number. Tribunal staff used the address the Claimant provided on his notice of appeal to the

Appeal Division. Someone at the Claimant's address accepted the delivery of the notice of hearing on May 24, 2019. The Claimant did not appear at the hearing and did not request an adjournment. I am satisfied that the Claimant received notice of the hearing, since Canada Post successfully delivered the notice of hearing to the Claimant's address. I proceeded with the hearing in the Claimant's absence.¹

ISSUES

[6] Issue 1 – Did the Claimant make a late reconsideration request?

[7] Issue 2 – Did the Commission make its decision fairly when it refused to accept the Claimant's late reconsideration request?

ANALYSIS

[8] When the Commission makes a decision about your employment insurance benefits, you have a 30-day deadline to ask for a review of the decision. This is called a reconsideration request.²

[9] If you wait more than 30 days to ask for a reconsideration, you are late. The Commission has to decide whether it will accept your late reconsideration request.

[10] When it looks at a late reconsideration request, the Commission will ask two questions:

- Do you have a reasonable explanation for being late?
- Have you shown that you always meant to ask for a reconsideration, even though you were late?³

[11] The Commission will accept the late reconsideration request and do a decision review if the answer to both questions is "yes."

¹ Section 12 of the *Social Security Tribunal Regulations* allows me to proceed with a hearing in the appellant's absence if I am satisfied that they received notice of the hearing.

² Section 112(1) of the *Employment Insurance Act*.

³ Section 1(1) of the *Reconsideration Request Regulations*. The Commission will consider whether the claimant has a reasonable explanation for the delay and whether the claimant demonstrated a continuing intention to request a reconsideration.

[12] The Commission makes its own decisions about accepting or refusing late reconsideration requests. This is called a discretionary power.⁴

[13] Even though the Commission has discretionary power to accept or refuse a late reconsideration request, the Commission must make its decision fairly. The Commission must look at all of the information when it makes a decision. The Commission should pay attention to important information about why you were late and ignore things that are not important.⁵

[14] I must respect the Commission's discretionary power. Usually, this means that I cannot change the Commission's decision. However, if the Commission did not make its decision fairly, then I can step into the Commission's role. Then, I may make the decision to accept or refuse the late reconsideration request.

Issue 1: Did the Claimant make a late reconsideration request?

[15] The Claimant asked for a reconsideration about seven months after he learned about the Commission's decision. The reconsideration request was late.

[16] The Commission decided that the Claimant could not receive employment insurance benefits because he quit his job. The Commission mailed a letter explaining its decision to the Claimant on June 20, 2017.

[17] The Claimant has never said that he did not get this letter. The Claimant has never said that he did not know that the Commission made a decision about his employment insurance benefits. I believe that the Claimant knew that the Commission had made its decision. The Claimant knew about the Commission's decision by June or July 2017.

[18] The Claimant might have tried sending a letter asking about his employment insurance benefits in July 2017. He is not sure whether he sent this letter to his old boss or whether he sent

⁴ I have decided that the Commission's power is discretionary because under the old legislation and looking at a similar part of the law, the Federal Court of Appeal decided that the Commission's power to refuse or accept a late request was discretionary. The Federal Court of Appeal made this decision in *Canada (Attorney General) v. Knowler*, A-445-95.

⁵ In *Canada (Attorney General) v. Purcell*, A-694-94, the Federal Court of Appeal states that the Commission must consider all relevant factors, ignore irrelevant factors, act in good faith, and act in a manner that is not discriminatory.

this letter to the Commission. The Commission does not have a copy of this letter. Even if the Claimant did send a letter to the Commission in July 2017, he did not follow up. He did not ask the Commission again about his employment insurance benefits until January 2018. In January 2018, the Claimant asked the Commission for a reconsideration.

[19] The Claimant had 30 days to ask for a reconsideration. He did not ask for a reconsideration until about seven months after the Commission made its decision. The Claimant's reconsideration request was late.

Issue 2: Did the Commission make its decision fairly when it refused to accept the Claimant's late reconsideration request?

[20] The Commission made its decision fairly. The Claimant gave the Commission information about why he was late and the Commission looked at all of this information. I must respect the Commission's decision. I cannot change the Commission's decision.

[21] The Commission asked the Claimant why he waited seven months to ask for a reconsideration. The Claimant said that he sent a letter in July 2017. He was confused about whether he sent the letter to his old boss or whether he sent the letter to the Commission. The Commission does not have a copy of the letter. It is likely that the Claimant did not send this letter to the Commission.

[22] The Claimant said that he did not speak or understand English well and that he needed his friend's help to ask for a reconsideration. His friend was out of the country from July until September. The Claimant was also busy looking for work and going to job search workshops.

[23] The Commission looked at all of the information the Claimant gave about why he was late. The Commission decided that the Claimant did not have a reasonable explanation for his delay. The Commission decided that the Claimant had not shown that he always meant to ask for a reconsideration. The Commission did not accept the Claimant's late reconsideration request.

[24] The Claimant did not give new information about why he was late when he appealed to the Tribunal. He gave the Tribunal information about why he stopped working, but he did not explain why his reconsideration request was late.

[25] The Commission made its decision fairly because it looked at all of the information the Claimant gave about why his reconsideration request was late. There is no new information. I must respect the Commission's decision. The Claimant's reconsideration request was late and the Commission does not have to do a decision review.

CONCLUSION

[26] I am dismissing the appeal.

Amanda Pezzutto
Member, General Division - Employment Insurance Section

HEARD ON:	June 11, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	No party appeared at the hearing