



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. M. v Canada Employment Insurance Commission*, 2019 SST 879

Tribunal File Number: GE-19-1660

BETWEEN:

R. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: August 12, 2019

DATE OF DECISION: August 30, 2019

DECISION

[1] I am allowing the appeal. I find that the Claimant's reconsideration request was not late and so the Commission should reconsider its original decision dated October 26, 2015.

OVERVIEW

[2] On May 18, 2013, the Claimant applied for benefits based on employment that ended on February 4, 2013. On October 26, 2015, the Commission disqualified him from receiving benefits as of May 12, 2013, after finding that he voluntarily left another job without just cause on February 20, 2013. It asked him to repay all the benefits he had received. It also imposed a penalty for failing to report this job, and issued a notice of violation.

[3] The Claimant said that he never received the Commission's decision letter. He only became aware of the disqualification when he later received a writ of seizure. He made a reconsideration request on February 20, 2018, as soon as he became aware of the disqualification. The Commission refused him more time for his request after finding that his request was late and he did not meet the conditions to get more time.

[4] The Claimant appealed this decision to the General Division of the Social Security Tribunal (General Division), which dismissed his appeal after finding that the Commission acted properly. He took his case to the Appeal Division of the Tribunal (Appeal Division).

[5] On April 8, 2019, the Appeal Division found that the General Division failed to observe a principle of natural justice because it denied the Claimant the right to be heard by relying on questions and answers without an oral hearing. The Appeal Division returned the matter to the General Division for a reconsideration of his case.

ISSUES

[6] I must first decide whether the Claimant's reconsideration request was late. If it was not late, then the Commission should proceed with the reconsideration. If I find that his request was late, then I need to decide if the Commission acted properly when it refused him more time to make his request.

ANALYSIS

[7] You have 30 days to request a reconsideration starting on the day after the Commission communicates its initial decision to you.¹ The Commission may allow you more time if you meet certain conditions.² It is up to you to show that you meet them.

[8] If your request is less than a year late, you must have a reasonable explanation for not making your request earlier. You must show that you had a continuing intention to make a request.³ If your request is more than a year late, your request must also have a reasonable chance of success, and the extra time must not prejudice the Commission's interests.⁴

[9] The Commission makes a discretionary decision if it refuses you more time for your late request.⁵ It has to show it used its discretionary power properly when making that decision.⁶ This means acting in good faith by considering all relevant factors and ignoring irrelevant ones.⁷

[10] The Commission disqualified the Claimant from receiving benefits on October 26, 2015, almost two and a half years after approving them. It sent him the decision letter by regular mail. It issued a Notice of Debt a few days later. The Claimant says he never got the letter or the Notice of Debt. He requested a reconsideration on February 20, 2018, right after making enquiries about a writ of seizure he had just received that meant he would lose everything. The Commission decided that his reconsideration request was 818 days late.

[11] The Claimant, a X, said that he lived in his father's basement. Mail to that address was forwarded to his father's US address for six months every year. The Commission argued that the Claimant must have received its decision letter because mail was delivered to his address for at least half the year and he said he received other letters there. The Commission found it reasonable to assume that his father would have given him his mail.

¹ S 112(1)(a) of the *Employment Insurance Act* (EI Act).

² Ss 112(1)(b) and 112(3) of the EI Act and s 1 of the *Reconsideration Request Regulations* (Reconsideration Regulations).

³ S 1(1) of the Reconsideration Regulations.

⁴ S 1(2) of the Reconsideration Regulations.

⁵ *Daley v Attorney General of Canada*, 2017 FC 297.

⁶ *Attorney General of Canada v Gagnon*, 2004 FCA 351.

⁷ *Attorney General of Canada v Uppal*, 2008 FCA 388.

[12] However, the Commission has not shown when, or if, its decision was communicated to the Claimant. There is no evidence that it communicated the decision verbally over the phone. It did not send the decision letter by registered mail, so there is no Canada Post delivery confirmation either. There is also no Attestation Certificate proving that the letter was mailed.⁸

[13] The Commission told the Claimant that “prior agents tried to reach him” by phone and by mail about the job he left on February 20, 2013, but he never responded. It gave no record of any phone calls. The evidence shows that the Commission issued one enquiry letter dated May 27, 2014; the Claimant said he never received it.⁹

[14] There is no evidence that the Commission tried to contact the Claimant again before issuing the disqualification on October 26, 2015. The Claimant reported that he discussed his brief additional employment with several Commission agents when he applied for benefits in May 2013, and in later job information sessions. He said these agents told him that these few extra days of work would not affect his benefits.

[15] I find that I cannot rely on the Commission’s conclusion that the Claimant received the decision letter solely on the presumption that sending a letter by regular mail means the recipient will receive it “in the ordinary course of the mails.”¹⁰ Sending a letter is not, on its own, conclusive evidence that it was delivered.¹¹ However, the Commission relied on this presumption when finding that the Claimant’s reconsideration request was 818 days late.

[16] However, as noted by the Appeal Division, “the fact that it was possible for him to have received the decision at that address does not make it *probable (original emphasis)*.”¹² Disputes often arise as to when, and even if, mail was delivered.¹³ The Commission must communicate a decision to a claimant to establish the deadline for challenging it.¹⁴

⁸ The Commission only filed a copy of an Attestation Certificate for the Notice of Debt it sent five days after the decision letter. The Certificate gave no address and listed an undated “disqualification,” with no further explanation.

⁹ There is no Attestation Certificate for this letter.

¹⁰ S 134(2) of the EI Act says I may assume claimants receive document mailed to them “in the ordinary course of the mails.”

¹¹ CUB 5730. I do not have to follow CUBs, but can draw from their logic.

¹² *R. M. v Canada Employment Insurance Commission*, 2019 SST 347. I am not bound by Appeal Division decisions, but I can use them as a guide.

¹³ *K. C. v Minister of Employment and Social Development*, 2017 SSTADIS 238.

¹⁴ *Bartlett v. Attorney General of Canada*, 2012 FCA 230.

[17] The Commission also argued that the Claimant “received notification of the decision by means of the statement of account/debt”; he should have followed up to find out what they were. The Claimant agreed that he received debt reminders sporadically. However, he testified that he thought they were reminders for taxes owing since he had not filed his tax returns. He was overwhelmed and confused because he was receiving all kinds of different debt notices at the time.

[18] I find that the debt reminder statements were not a substitute for the decision itself. There is no evidence that the statements relating to the disqualification contained the crucial information that the Commission had reversed its approval of his benefit claim from more than two years earlier.

[19] I find, on a balance of probabilities, that the Commission has not shown it communicated its decision to the Claimant either verbally or in writing until February 2018. I accept his sworn testimony that he only found out the Commission had retroactively disqualified him from receiving benefits right before he filed his reconsideration request. I find that he made his request within 30 days after this decision was communicated to him and therefore his request was not late.

[20] I note that if the Claimant’s reconsideration request had been 818 days late as the Commission argued, it appears that it did not use its discretionary power properly when refusing him more time since it did not consider all relevant factors.¹⁵ It did not assess all four conditions that apply when a reconsideration request is more than a year late.¹⁶ However, since I have found that the Claimant’s reconsideration request was not late, I do not need to make a finding on whether the Commission acted properly when it refused him more time to make his request.

CONCLUSION

[21] The Claimant’s reconsideration request was not late. This means that his appeal is allowed.

Lilian Klein

¹⁵ *Uppal*, see above footnote 7.

¹⁶ GD3-24.

Member, General Division - Employment Insurance Section

HEARD ON:	August 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. M., Appellant