



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. H. v Canada Employment Insurance Commission*, 2019 SST 959

Tribunal File Number: GE-19-2755

BETWEEN:

D. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: John Gillis

HEARD ON: August 12, 2019

DATE OF DECISION: August 27, 2019

DECISION

[1] The appeal is dismissed. D. H. (the ‘Claimant’) made his request for reconsideration late and the Commission exercised its discretion judicially when it refused to extend the time to request a reconsideration.

OVERVIEW

[2] The Claimant made a request for regular employment insurance benefits. The Commission issued a decision disqualifying the Claimant from receiving those benefits. The Commission decided that the Claimant had voluntarily left his job without just cause.

[3] Several months after the Commission’s denial of the Claimant’s regular benefits, the Claimant requested that the Commission reconsider its decision. The Commission declined the reconsideration request because the Claimant made the request beyond the 30-day limit. The Claimant appeals the Commission’s decision to the Tribunal.

ISSUES

[4] Issue #1 – Was the Claimant’s request made outside of the 30-day limit in which to make a reconsideration request?

Issue #2 – If so, did the Commission exercise its discretion in a judicial manner in denying the Claimant’s request to extend the 30-day limit?

ANALYSIS

[5] A claimant may make a request for reconsideration of a decision by the Commission within 30 days.¹ The 30-day time limit begins when the Commission communicates its decision to the claimant. When a claimant makes a reconsideration request beyond the 30-day limit, the Commission may grant further time to make the request.² The Commission’s decision to deny or allow further time is discretionary.³

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

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

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

[6] The Commission must exercise its discretion in accordance with the legislation. When the extension of time requested is made after another application for benefits is submitted, such as in this matter, the Commission may grant the request if it is satisfied that:

- a) there is a reasonable explanation for requesting a longer period;⁴
- b) the claimant has demonstrated a continuing intention to request a reconsideration;⁵
- c) the request for reconsideration has a reasonable chance of success;⁶ and
- d) no prejudice would be caused to any party by allowing the extension.⁷

[7] Discretionary decisions attract a high level of deference. This means that I cannot intervene unless I find that the Commission failed to exercise its discretion “judicially”.

[8] The Commission will not have exercised its discretionary power judicially if the Claimant proves that the Commission acted in bad faith, acted for an improper purpose or motive, took into account an irrelevant factor, ignored a relevant factor or acted in a discriminatory manner.⁸

Issue 1: Was the Claimant’s request made outside of the 30-day limit in which to make a reconsideration request?

[9] Yes.

[10] The Claimant did not make his request for reconsideration within 30-days of the Commission communicating its decision to him.

[11] The Claimant applied for regular employment insurance benefits on December 7, 2018. The Commission denied the Claimant’s application. The Claimant admits that the Commission communicated its decision to him on January 10, 2019. The Claimant requested that the

⁴ Section 1(1) of the *Reconsideration Request Regulations* under the *Employment Insurance Act*.

⁵ Section 1(1) of the *Reconsideration Request Regulations* under the *Employment Insurance Act*.

⁶ Section 1(2) of the *Reconsideration Request Regulations* under the *Employment Insurance Act*.

⁷ Section 1(2) of the *Reconsideration Request Regulations* under the *Employment Insurance Act*.

⁸ *Canada (Attorney General) v Purcell*, A-694-94.

Commission reconsider its decision by a Request for Consideration dated June 4, 2019 that Service Canada received on June 5, 2019.

[12] As the Commission communicated its decision to the Claimant on January 10, 2019, the Claimant had 30 days from then to request a reconsideration of that decision. I find that the Claimant did not request a reconsideration within the 30-day limit. The Claimant's request for reconsideration was late.

Issue 2: Did the Commission exercise its discretion in a judicial manner in denying the Claimant's request to extend the 30-day limit?

[13] Yes.

[14] The Commission exercised its discretion judicially when it declined to extend the 30-day limit for the Claimant to file his request for reconsideration.

[15] The Claimant submits that the explanation for his delay in requesting a reconsideration of the Commission's decision was because he believed that the Commission had approved him when they subsequently approved for other benefits (sickness benefits). The Claimant testified that it was his belief that the Commission's approval of his sickness benefits meant that they had also approved his regular benefits. The Claimant's belief is despite his admission that he did receive the Commission's denial of his application for regular benefits.

[16] The Claimant further submits that he did not request the reconsideration of the Commission's decision until he became aware that he would not continue to receive benefits. The Claimant received sickness benefits until April 6, 2019. He requested the reconsideration on June 5, 2019. The Claimant's explanation for this delay is that he was not in his right state of mind due to his mental illness.

[17] The Claimant testified that his mental health had declined before the Commission approved his application for sickness benefits. The Claimant's doctor prescribed him medication in February of 2019 and told him not to work. The Claimant's doctor eventually told the Claimant that he could return to work in late April or early May of 2019.

[18] The Commission decided that the Claimant's explanations for his delay were not reasonable. The Commission considered the Claimant's explanation of his belief that his regular benefits would continue after his sickness benefits and the explanation of the Claimant's mental state. The Commission also considered that the Claimant had visited Service Canada several times while receiving sickness benefits and had been able to file a sickness benefit claim.

[19] The Commission also decided that the Claimant did not demonstrate a continuing intention to request a reconsideration. The Commission considered the delay between when the Claimant received the Commission's decision and when the Claimant made his reconsideration request. The Commission considered that the Claimant had been in contact with Service Canada after he received the decision. Finally, the Commission considered that the Claimant was able to file a request for sickness benefits but not a request for reconsideration.

[20] The Commission was also satisfied that the Claimant's request for reconsideration did not have reasonable chance of success. The Commission considered the Claimant's position that he voluntarily left his job because of stress and anxiety. The Commission considered the Claimant's submissions but was not satisfied that the Claimant had a reasonable chance of success.

[21] Finally, the Commission determined that there would be no prejudice to any party by allowing the Claimant's requested extension. Despite the Commission's finding on this one aspect of the legal test⁹, for the Commission to allow an extension it must be satisfied on all aspects of the test. As stated above, the Commission was not satisfied on all other aspects of the required criteria to permit an extension.

[22] I cannot substitute my decision for that of the Commission unless it did not act judicially. I find that the Commission acted judicially in its decision that the Claimant did not have a reasonable explanation for his delay or a continuing intention to request a reconsideration. There is no evidence before me that the Commission acted in bad faith or for an improper purpose. The Commission took into account the relevant factors and did not take into account any irrelevant factors. The Commission considered the Claimant's explanation for the delay and his submissions. The Claimant repeated his explanation at the hearing and raised no new evidence or

⁹ Section 1 of the *Reconsideration Request Regulations* under the *Employment Insurance Act*.

submissions. The Commission did not act in a discriminatory manner. I must show deference to the Commission's decision and cannot substitute my decision for the Commission's decision.

[23] I find that the Commission exercised its discretion judicially when it considered the Claimant's request for an extension of time to file his request for reconsideration. Therefore, I cannot interfere with the Commission's discretionary decision to refuse the extension of time.

CONCLUSION

[24] I find that the Commission exercised its discretion to deny the Claimant's request judicially. This means the appeal is dismissed.

John Gillis

Member, General Division - Employment Insurance Section

| | |
|-----------------------|------------------|
| HEARD ON: | August 12, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | D. H., Appellant |