



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *V. L. v Canada Employment Insurance Commission*, 2019 SST 1007

Tribunal File Numbers: GE-19-3006  
GE-19-3007

BETWEEN:

**V. L.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Charline Bourque

HEARD ON: September 10, 2019

DATE OF DECISION: September 10, 2019

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] On July 28, 2015, the Commission informed the Appellant that it could not pay her Employment Insurance benefits because she was outside Canada from July 22, 2014, to September 2, 2014, and she was not available for work during that period. The Commission found that the Appellant had made three false statements and imposed a penalty and a notice of serious violation on her.

[3] The Appellant then filed a claim for Employment Insurance benefits effective June 2, 2019. The Commission informed her that the claim for benefits could not be established because of the notice of violation. The Appellant must accumulate 1,050 insurable hours of employment because of the violation and had accumulated only 943 insurable hours of employment during her qualifying period.

[4] On July 9, 2019, the Appellant asked the Commission to reconsider the decision it gave on June 10, 2019.<sup>1</sup> The Commission has determined that it considered the Appellant's reasons for her delay in requesting a reconsideration of her decision, but it has also determined that those reasons do not satisfy the requirements of the *Reconsideration Request Regulations*. Consequently, the Commission informed the Appellant that it would not reconsider the July 28, 2015, decision.

[5] The Appellant argues that she never asked for the reconsideration of the Commission's 2015 decision. As a result, she disagrees with the fact that the Commission gave a reconsideration decision on the reconsideration period because she never made that request. She is of the view that the Commission is depriving her of the right to make such a request and that it is depriving her [translation] "theoretically, arbitrarily, and in a roundabout way" of her right to make a request to reconsider the 2015 decision in a timely manner.

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<sup>1</sup> GE-19-3007/GD3-15.

## **PRELIMINARY MATTERS**

[6] Since the issues are connected, the Tribunal combined files GE-19-3006 and GE-19-3007 to make the hearing easier.

[7] At the hearing, the Appellant explained that she did not want to appeal the Commission's decision on the issue of the non-established benefit period. She indicated numerous times that she was appealing decision number 356732, the decision related to the reconsideration period. The Tribunal considers the Appellant to have withdrawn her appeal concerning the decision on the non-established benefit period and will therefore not give a decision on that matter since the Appellant indicated that she was not appealing the Commission's decision concerning number 354917 (GE-19-3006).

## **ISSUES**

[8] Was the Appellant's reconsideration request filed after the 30 days set by the *Employment Insurance Act* (EI Act)?

[9] Did the Commission exercise its discretion judicially when it refused to extend the reconsideration period beyond 30 days?

## **ANALYSIS**

[10] The Appellant argues that she never requested the reconsideration of the Commission's 2015 decision. She therefore disagrees with the fact that the Commission gave a reconsideration decision on the reconsideration period because she never made that request. She is of the view that the Commission is depriving her of her right to make such a request and that it is depriving her [translation] "theoretically, arbitrarily, and in a roundabout way" of her right to make a request to reconsider the 2015 decision in a timely manner.

[11] The Appellant also argues that, if she had wanted to present an argument in relation to the reconsideration period, she would have prepared more. The Tribunal offered to adjourn the hearing to give her additional time. The Appellant did not want to ask for an adjournment since

she indicated that, essentially, she was not ready to request a decision on the reconsideration period, which the Commission gave without her consent.

[12] The Appellant wants the Tribunal to consider the fact that she never requested the reconsideration of the 2015 decision. She wants the Commission only to reconsider the June 2019 decision, since she was asking whether the number of insurable hours of employment needed would continue to increase.

[13] As explained to the Appellant, the Tribunal has jurisdiction<sup>2</sup> only to give a decision on the Commission's reconsideration decision.<sup>3</sup> As a result, the Tribunal has no punitive powers over the Commission. It does not have the authority to order the Commission to withdraw a decision it has given. However, as explained, the Tribunal has the authority to give a decision on an appeal filed in relation to a reconsideration decision given by the Commission. The Tribunal may therefore allow, dismiss, or (in certain cases) amend a reconsideration decision given by the Commission.

[14] Therefore, the Tribunal specifies that, in relation to the decision on the reconsideration period, its role is limited to determining whether the Commission exercised its discretion judicially<sup>4</sup> when it refused the Appellant's request to extend the 30-day period to request a reconsideration.<sup>5</sup> The Tribunal does not have to decide on the issues related to the stay outside Canada, the penalty, and the notice of violation. The Tribunal does not have to decide on the issue of whether the Commission should have given a reconsideration decision on the issue of the reconsideration period, either. The Tribunal considers that the Appellant had the opportunity to present her explanations in relation to the issue of the reconsideration period.

**Issue 1: Was the Appellant's reconsideration request filed after the 30 days set by the Act?**

[15] The Tribunal is of the view that the reconsideration request was filed after 365 days, that is, after the 30 days set by the *Employment Insurance Act*.

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<sup>2</sup> EI Act, s 113.

<sup>3</sup> EI Act, s 112.

<sup>4</sup> Under section 112 of the *Employment Insurance Act* and section 1 of the *Reconsideration Request Regulations*.

<sup>5</sup> *Sirois*, A-600-95; *Chartier*, A-42-90.

[16] A claimant may request a reconsideration of a decision within 30 days after the day the decision is communicated to them<sup>6</sup> or within any further time that the Commission may allow according to the terms of the *Reconsideration Request Regulations*.

[17] The Commission gave a decision on a stay outside Canada, a penalty, and a notice of violation on July 28, 2015.<sup>7</sup> The Service Canada centre received the reconsideration request on July 9, 2019.<sup>8</sup>

[18] At the hearing, the Appellant indicated that she had never asked for a reconsideration of the decision given in 2015. She is of the view that the Commission is depriving her of her right to make such a request and that it is depriving her [translation] “theoretically, arbitrarily, and in a roundabout way” of her right to make a request to reconsider the 2015 decision in a timely manner. The Appellant’s argument was connected with the fact that she did not ask the Commission to give a decision on the 2015 decision.

[19] The Commission indicates that the Appellant was aware of the Commission’s decision dated July 28, 2015, because she confirms that she received the notice of decision on August 3, 2015. She filed two other Employment Insurance claims in 2016 and 2018 for which she was informed that she did not qualify because of the violation that resulted in her needing more hours to qualify. It was not until July 9, 2019, that she filed a reconsideration request, following the third refusal of benefits, which means she is 1,416 days late.

[20] The Tribunal is of the view that the Appellant filed her reconsideration request after more than 365 days, that is after the 30 days set by the Act, because the Appellant had confirmed to the Commission that she was aware of the decision on August 3, 2015.

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<sup>6</sup> EI Act, s 112.

<sup>7</sup> GD19-3007/GD3-11 to GD3-13.

<sup>8</sup> GE-19-3007/GD3-15/16.

**Issue 2: Did the Commission exercise its discretion judicially when it refused to extend the reconsideration period beyond 30 days?**

[21] The Tribunal is of the view that the Commission exercised its discretion judicially because it acted in good faith and considered all the relevant factors, while disregarding irrelevant factors, when it refused to extend the time to request a reconsideration.

[22] The Commission may allow a longer period to make a request for reconsideration of a decision “if the Commission is satisfied that there is a reasonable explanation for requesting a longer period” and the person has “demonstrated a continuing intention to request a reconsideration.”<sup>9</sup>

[23] Furthermore, since the Appellant filed her reconsideration request more than 365 days late, the Commission must also be satisfied that the request for reconsideration has a reasonable chance of success and that prejudice would not be caused to any party.<sup>10</sup>

[24] The case law has confirmed that the Commission’s decision to grant an extension of time for a reconsideration request is discretionary.<sup>11</sup>

[25] The Federal Court of Appeal found that the Commission’s discretionary decisions should not be overturned unless it can be shown that it did not exercise its discretion judicially, that is acting in good faith, considering all relevant factors, and disregarding irrelevant factors.<sup>12</sup>

[26] In other words, the Tribunal may not substitute its view for that of the Commission. Instead, it must determine whether, when making its decision, the Commission acted in good faith, considered all relevant circumstances in the file, disregarded irrelevant aspects, and acted for a proper motive and in a non-discriminatory manner.<sup>13</sup>

[27] Therefore, the Tribunal must determine whether the Commission exercised its discretion judicially when it refused to extend the 30 days for filing a request to reconsider its initial

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<sup>9</sup> *Reconsideration Request Regulations*, s 1(1).

<sup>10</sup> *Reconsideration Request Regulations*, s 1(2).

<sup>11</sup> *Daley v Canada (Attorney General)*, 2017 FC 297.

<sup>12</sup> *Chartier v Canada (Employment and Immigration Commission)*, [1990] FCA A-42-90; *Canada (Attorney General) v Uppal*, 2008 FCA 388.

<sup>13</sup> *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

decision. If the Tribunal is of the view that the Commission exercised its discretion judicially, it will not grant the Appellant an extension of time to file a reconsideration request. However, if the Tribunal is of the view that the Commission did not exercise its discretion judicially, it may grant the Appellant the extension of time to file a reconsideration request, and the Commission will reconsider the decision it initially gave.

[28] The Tribunal notes that the Appellant filed her reconsideration request more than 365 days after the decision on her Employment Insurance claim was given.

[29] The Appellant indicated that she never requested the reconsideration of the 2015 decision.

[30] The Tribunal notes that the Commission considered the factors set out in sections 1(1) and 1(2) of the *Reconsideration Request Regulations*.<sup>14</sup>

[31] The Commission indicates that the Appellant [translation] “has shown that she was negligent. She has not shown that there is a reasonable explanation for the extension and has not demonstrated a continuing intention to request a reconsideration. The claimant was aware of the Commission’s July 28, 2015, decision, because she states that she received the decision on August 3, 2015. She filed two (2) other Employment Insurance claims in 2016 and 2018 for which she was informed that she did not qualify because of the violation that requires her to have more hours to qualify. It was not until July 9, 2019, after a third refusal of benefits, that she filed a reconsideration request, which means she is one thousand four hundred and sixteen (1,416) days late.”<sup>15</sup>

[32] The Tribunal finds that, at the hearing, the Appellant did not raise circumstances that had not been presented to the Commission when it decided not to extend the time for submitting a reconsideration request.

[33] Furthermore, although the Appellant raised the fact that she never requested a reconsideration of the 2015 decision, the Tribunal is of the view that its role is limited to giving a

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<sup>14</sup> GE-19-3007/GD4-3.

<sup>15</sup> *Ibid.*

decision on the Commission's reconsideration decision. As stated, it cannot ask the Commission to withdraw that decision. The Tribunal offered the Appellant the opportunity to be heard on the issue of the reconsideration period.

[34] As a result, the Tribunal is of the view that the Commission has considered the grounds the Appellant raised.

[35] The Tribunal is of the view that the Commission acted in good faith and considered all the relevant circumstances in the file, while disregarding irrelevant aspects, when it refused to extend the time for requesting a reconsideration of a decision. The Tribunal is of the view that the Commission exercised its discretion judicially when it refused to extend the time for requesting a reconsideration of the decision. The Tribunal is of the view that it cannot therefore intervene.

## **CONCLUSION**

[36] The appeal is dismissed.

Charline Bourque  
Member, General Division – Employment Insurance Section

HEARD ON:	September 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	V. L., Appellant