



Tribunal de la sécurité
sociale du Canada

Social Security
Tribunal of Canada

[TRANSLATION]

Citation: *J. C. v Canada Employment Insurance Commission*, 2019 SST 1067

Tribunal File Number: GE-19-3175

BETWEEN:

J. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: September 24, 2019

DATE OF DECISION: September 24, 2019

DECISION

[1] The appeal is dismissed. I find that the Commission's refusal to extend the 30-day time limit to file a reconsideration request is justified.

OVERVIEW

[2] On July 4, 2012, the Appellant filed for Employment Insurance benefits. On February 7, 2014, the Canada Employment Insurance Commission (Commission) informed the Appellant that it could not pay him benefits as of October 5, 2012, because he had stopped working for X on October 4, 2013, following an accident at work, and because he has been receiving CSST [occupational health and safety commission] benefits since that time. It readjusted the earnings received based on the Appellant's actual income and, contrary to what the Appellant had stated, it found that the Appellant was not able to work. The Commission also informed the Appellant that he had provided false information and that it was imposing a penalty as well as a notice of violation. On August 2, 2019, the Appellant requested a reconsideration of the Commission's decision after the 30-day time limit to make this request.

[3] The Commission issued a decision on August 22, 2019, informing the Appellant that the date on which he filed his reconsideration request was more than 30 days after the decision was communicated to him. It examined the reasons the Appellant provided to justify his late request, and it determined that those reasons did not meet the requirements of the *Reconsideration Request Regulations*. The Commission therefore informed the Appellant that it would not reconsider its decision.

[4] I must determine whether the Commission's refusal to extend the 30-day time limit to file a reconsideration request is justified. Such a decision can be amended only if the Commission did not exercise its discretion judicially.

ISSUES

[5] Did the Appellant file his reconsideration request within the 30-day time limit?

[6] If not, does the Appellant have a reasonable explanation for his delay and has he shown a continuing intention to pursue his reconsideration request?

[7] Did the Commission exercise its discretion judicially?

ANALYSIS

[8] The Commission may allow further time to file a request for reconsideration if it is satisfied that there is a reasonable explanation for requesting an extension and the claimant has demonstrated a continuing intention to request a reconsideration.¹

[9] I cannot intervene following a discretionary decision of the Commission unless it did not exercise its power judicially. The Commission must show that it acted in good faith, having regard to all the relevant factors and having ignored any irrelevant factors.²

[10] My role is to determine whether the Commission exercised its discretionary power judicially when it refused to allow the Appellant further time to file a reconsideration request.

[11] If I find that the Commission exercised its power judicially, I will not grant the Appellant an extension to file his reconsideration request. However, if I find that the Commission did not exercise its discretionary power judicially, I can grant the Appellant further time to request a reconsideration, and the Commission will review its initial decision.

Did the Appellant file his reconsideration request within the 30-day time limit?

[12] The facts show that the Appellant did not respect the 30-day time limit to file his reconsideration request. The Commission issued the initial decision on February 7, 2014, and the Appellant filed his request for reconsideration on August 2, 2019,

[13] The Appellant acknowledges that he had been informed of the decision verbally on February 6, 2014. A Commission agent informed him of the overpayment and penalty amounts he owed.

¹ *Reconsideration Request Regulations*, s 1.

² *Sirois*, A-600-95; *Chartier*, A-42-90.

[14] He also received the written decision on February 7, 2014.

[15] When the Appellant filed his reconsideration request on August 2, 2019, the 30-day time limit to make a reconsideration request had passed.

[16] I find that the Appellant filed his request after the 30-day time limit.

Does the Appellant have a reasonable explanation for his delay and has he shown a continuing intention to pursue his reconsideration request?

[17] The Appellant explained that he did not request a reconsideration of the decision when it was communicated to him. The decision caused him subsequent refusals of Employment Insurance benefits as well as a significant sum to reimburse.

[18] He explained that a large part of the amount owing was reimbursed out of his taxes since the Canada Revenue Agency retained certain sums. He explained that, in 2016 and in 2018, he enquired about his rights with the Commission as well as with the Canada Revenue Agency and he then requested a write-off of that amount.

[19] The Appellant argues that he was misinformed and explains that he did not know he had to submit an official form to request a reconsideration of the Commission's February 7, 2014, decision.

[20] During the summer of 2019, the Appellant's wages were garnished to reimburse the sums owing. Following the garnishment, the Appellant contacted his Member of Parliament and the Commission. An agent would have explained to him that he had to submit an official form to request reconsideration of the February 7, 2014, decision.

[21] On receiving that information, the Appellant sent his reconsideration request to the Commission on August 2, 2019.

[22] The Commission submits that the reconsideration would have no reasonable chance of success. It asserts that the Appellant was aware of the February 7, 2014, decision and that he waited until August 2, 2019, to request a reconsideration. It notes that the Appellant waited 1,972 days to request a reconsideration of his file. The Commission argues that he did not show a

continuing intention to request a reconsideration of the decision since the notice of ruling indicated the possibility of doing so and he had contacted the Commission himself after he received the decision.

[23] I am of the same view. The Appellant had 30 days to file a reconsideration request, he was verbally informed of the Commission's initial decision on February 6, 2014, and he received the written decision on February 7, 2014. Unfortunately, ignorance of the Act is not a reasonable explanation for the delay in filing a reconsideration request.

[24] The Commission's decision, dated February 7, 2014, clearly indicates to the Appellant that he had 30 days following the date the decision was communicated to him to request a reconsideration. Internet and telephone contact information was also provided so the Appellant could obtain the Request for Reconsideration form or request information, if necessary.

[25] Even if I understand that the February 7, 2014, decision caused several disappointments for the Appellant, I find that, by filing his reconsideration request only on August 2, 2019, he did not show a continuing intention to pursue his appeal. This despite the fact that the Appellant had discussions with the Canada Revenue Agency between 2016 and 2018.

Did the Commission exercise its discretion judicially?

[26] The Commission's power to grant an extension is a discretionary power that can be amended only if the Commission did not exercise it judicially.³

[27] All the relevant circumstances were considered when the Appellant's delay in making his request for reconsideration was refused. The Commission found that it had informed the Appellant nine times of the possibility of requesting a reconsideration, that the Appellant had indicated that he was not on top of things, that he had worked for three months in British Columbia, and that given his family situation, he had not gotten around to it. It also considered the fact that the Appellant was looking for employment.

³ *Knowler*, A-445-93; *Plourde*, A-80-90; *Op. Cit.*; *Chartier*, A-42-90.

[28] However, it also considered that the Appellant had waited 1,972 days to request a reconsideration of his file.

[29] I find that the Commission exercised its discretion judicially by refusing to allow the Appellant an extension of time to request a reconsideration.⁴

[30] The Commission's power to grant an extension is discretionary, and the decision to grant or refuse an extension can be overturned only if the Commission exercised its power in a non-judicial manner or if the decision is based on irrelevant factors or made without regard to relevant factors.⁵

[31] I find that the Commission's refusal to extend the 30-day period to file a request for reconsideration is justified.⁶

CONCLUSION

[32] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	September 24, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	J. C., Appellant

⁴ *Op. Cit., Sirois and Chartier.*

⁵ *Ibid.*

⁶ Act, s 112 and *Reconsideration Request Regulations*, s 1.