



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. T. v Canada Employment Insurance Commission*, 2019 SST 1435

Tribunal File Number: GE-19-3719

BETWEEN:

D. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: November 12, 2019

DATE OF DECISION: November 18, 2019

DECISION

[1] I am dismissing the Claimant's appeal. The Canada Employment Insurance Commission (Commission) does not have to reconsider its initial decision.

OVERVIEW

[2] The Claimant was collecting employment insurance benefits. He reported income from a self-employment venture and the Commission gathered more information about his self-employment activity. The Commission decided that the Claimant was not entitled to benefits because he was self-employed. The Commission mailed a letter explaining its decision to the Claimant. The Claimant opened the Commission's decision in April 2019. He requested a reconsideration about five months later. The Commission decided that the Claimant's reconsideration was late. The Commission refused to reconsider its decision. The Claimant appealed to the Tribunal.

[3] I am dismissing the Claimant's appeal. The Claimant's request for reconsideration was late. The Commission made its decision fairly when it refused the Claimant's reconsideration request. I must respect the Commission's decision-making authority. I cannot order the Commission to reconsider its initial decision.

ISSUES

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

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

ANALYSIS

[6] 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.¹

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

[7] 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.

[8] 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?²

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

[10] The Commission makes its own decisions about accepting or refusing late reconsideration requests. This is called a discretionary power.³

[11] 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.⁴

[12] 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.

² 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.

³ 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.

⁴ 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.

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

[13] The Claimant asked for a reconsideration about five months after he learned about the Commission's initial decision. The Claimant's reconsideration request is late.

[14] The Commission decided that the Claimant was not entitled to receive benefits because he was self-employed. The Commission mailed a decision letter to the Claimant on March 11, 2019.

[15] The Claimant agreed that he received the Commission's decision letter. He told the Commission that he opened the letter sometime in April 2019, more than a month after the date on the letter. At the hearing, he said that he did not remember when he opened the letter.

[16] The Claimant did not take action on the letter right away. He set the letter aside, and then found it again in September 2019. He asked for a reconsideration on September 26, 2019.

[17] I accept that the Claimant does not remember exactly when he opened the Commission's decision letter. I accept that he probably opened the Commission's letter more than 30 days after March 11, 2019. Because he told the Commission that he opened the letter in April 2019, I find it is likely that he opened the letter before the end of the month. I find that the Claimant learned about the Commission's decision and his reconsideration rights by April 30, 2019, at the latest.

[18] The Claimant had 30 days to request a reconsideration. He had until May 30, 2019 to make a reconsideration request. The Commission received the Claimant's reconsideration request on September 26, 2019. This is more than 30 days after he learned about the Commission's decision. The Claimant's reconsideration request is late.

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

[19] The Commission made its decision fairly. The Commission considered the Claimant's explanation for his late reconsideration request. The Claimant does not have new information. I must respect the Commission's decision. I cannot change the Commission's decision.

[20] The Claimant told the Commission that he did not ask for a reconsideration when he opened the letter in April because he got busy. He was starting a self-employment venture and it occupied his time. He asked for the reconsideration in September because he found the letter again and remembered that he had to deal with it.

[21] At the hearing, the Claimant gave the same explanation for his delay. He said that he opened the letter when he was busy with work. He said that dealing with the Commission's decision was a secondary priority because he was busy with his self-employment venture. The Claimant said that he asked his employment centre case manager for advice about the Commission's decision in July 2019. He included a copy of the email he sent to the case manager. He said that the case manager told him to call the Commission.

[22] The Claimant did give any new information about his delay at the hearing. I am satisfied that the Commission considered all relevant factors when it made its decision.

[23] The Claimant argues that the Commission made an incorrect decision in the first place. He argues that the Commission has not given enough weight to the fact that the initial decision is incorrect.

[24] I find that the Commission understood that the Claimant disagreed with its initial decision. Anyone who asks for a reconsideration believes that the Commission has made an incorrect decision. The fact that the Claimant disagreed with the Commission's decision was obvious because he was asking for a reconsideration. The fact that the Claimant believes that the Commission's decision was incorrect is not a relevant factor that the Commission had to consider when it assessed the Claimant's reconsideration request.

[25] The Commission decided that the Claimant did not show a continuing intention to ask for a reconsideration because he focused on starting his business instead of asking for a reconsideration. The Commission also decided that this was not a reasonable explanation for his delay.

[26] The Commission considered the Claimant's explanation for his late reconsideration request. The Commission did not ignore any relevant factors. The Commission did not act in bad

faith. The Commission did not act in a discriminatory way. The way the Commission used its discretionary power was fair.

[27] The Commission made its decision fairly. I must respect the Commission's decision. The Claimant's reconsideration request was late. I cannot order the Commission to reconsider its initial decision.

CONCLUSION

[28] I am dismissing the Claimant's appeal. The Commission does not have to reconsider its initial decision.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	November 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. T., Appellant