



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *G. C. v Canada Employment Insurance Commission*, 2019 SST 1523

Tribunal File Number: GE-19-3723

BETWEEN:

**G. C.**

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: Mark Leonard

HEARD ON: November 26, 2019

DATE OF DECISION: December 9, 2019

## **DECISION**

[1] The appeal is dismissed. The Claimant has not demonstrated that he had a good reason for the delay nor a continuing intention to make a request for redetermination.

## **OVERVIEW**

[2] The Claimant worked on a road repair crew. He established a claim for Employment Insurance regular benefits when he was laid off in December 2016. Subsequently in November 2017, the Canada Employment Insurance Commission determined that the Claimant was unable to work due to disability and reassessed his claim. They alleged that he had continued to receive regular benefits and made false statements regarding his capacity and availability to work. They issued a decision of disentitlement to benefits and notice of overpayment of benefits retroactive to April 2017.

[3] The Claimant made a request for reconsideration of the decision in September 2019. A claimant has 30 days to file a request for reconsideration of the Commission's decision. If the request is beyond the 30 days, the Commission has discretion to decide if it will accept the request. The Claimant told the Commission that he has a medical condition that caused him to be unable to make the request sooner. After a review of the Claimant's explanation for the delay, the Commission determined that he had not shown a continuing intention to make the request throughout the period of delay. It exercised its discretion and refused the Claimant's request for reconsideration.

[4] The Claimant now seeks the intervention of the Tribunal to grant him an extension of time and deem his request for redetermination timely

## **PRELIMINARY MATTERS (Post-Hearing Documents)**

[5] At hearing, the Claimant referred to a medical report (GD6) which supports his statements concerning his medical condition. He asserts that this condition prevented him from making his request for reconsideration earlier. I asked the Claimant to forward the document to the Tribunal. Since the document speaks directly to the medical condition of the Claimant during

the period of time between receiving his original decision and his request for redetermination, I will admit it.

## ISSUES

- 1. Was the Claimant's request made outside the 30-day limit in which to make a reconsideration request?**
- 2. Did the Commission exercise its discretion in a judicial manner in denying the Claimant's request to extend the 30-day period to make a request for redetermination?**

## ANALYSIS

[6] When the Commission denies an extension of time to request a reconsideration under the *Regulations*<sup>1</sup>, the only question before the Tribunal is whether the Commission exercised its discretion judicially when it refused the extension of time. The Claimant's overpayment, allegation of making false reports, and unavailability for work (substantive matters) are not matters that the Tribunal can address in this appeal.

[7] The Tribunal can only render a decision on whether the Claimant should be granted an extension to file a reconsideration request, and then, only if it determines that the Commission did not exercise its discretion judicially.

[8] I must first determine if the Claimant's request was filed late. Then I must determine if the Commission exercised its discretion judicially when it denied the Claimant's request to extend the 30-day period in which to make a request.

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

[9] I find that the Claimant's request was late.

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<sup>1</sup> Section 1, *Reconsideration Request Regulations*.

[10] A claimant can request that the Commission reconsider a decision within 30 days of the day the decision was communicated to them<sup>2</sup>. The Commission is responsible for communicating decisions to Claimant. The burden of proof that the communication was received rests with the Commission<sup>3</sup>.

[11] The Commission sent the Claimant its decision on the substantive matters on November 21, 2017, by mail. The Claimant admits having received the decision shortly after this time.

[12] He filed his request for redetermination on September 20, 2019. The delay is greater than the 30-day time limit. Therefore, it is filed late under the *Act*. The Claimant does not dispute that his claim was filed late. He asserts that he had a reasonable explanation why it was filed late.

**Issue 2: Did the Commission exercise its discretion judicially in denying the Claimant's request to extend the 30-day period to make a request for redetermination?**

[13] I find that the Commission did exercise its discretion judicially. It examined the reasons for the late filing and determined that the Claimant did not show a continuing intention to request a redetermination.

[14] The Commission has discretion to decide if it will grant such a request<sup>4</sup>. The Commission's decision can only be varied if the Commission did not exercise this discretionary power judicially. The Tribunal can only interfere with the Commission's decision to refuse the extension of time to make the reconsideration request if the Commission failed to exercise its discretion judicially. Discretion is not exercised judicially if it can be shown that the decision maker:

- Acted in bad faith;
- Acted for an improper purpose or motive;
- Took into account an irrelevant factor;
- Ignored a relevant factor;

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<sup>2</sup> Paragraph 112 (1)(a), *Employment Insurance Act*.

<sup>3</sup> (*Bartlett v. Canada (A.G.)*, 2012 FCA 230)

<sup>4</sup> (*Daley v. Canada (A.G.)*, 2017 FC 297)

- or acted in a discriminatory manner<sup>5</sup>.

[15] The Commission must be satisfied with two *factors* before granting an extension<sup>6</sup>.

1. A claimant must show that there was a reasonable explanation for the delay in making the request.
2. A claimant must demonstrate a continuing intention to request the reconsideration.

[16] If the request is made beyond 365 days after the decision was communicated to the claimant, the Commission must further satisfy itself of the following additional two *factors*<sup>7</sup>.

1. The request for reconsideration has a reasonable chance of success.
2. That no prejudice would be caused to the Commission's case or another party by allowing a longer period to make the request.

[17] The Commission submitted that it received the Claimant's request for reconsideration on September 26, 2019. The date of communication of the original decision to the Claimant was November 21, 2017. The delay was greater than 365 days and therefore, the Commission was obligated to consider all four factors.

[18] In support of its decision to deny the request for reconsideration, the Commission examined the four factors and determined the following;

- The Claimant was aware of the decision in November 2017.
- He did not file the request until September 2019, and therefore it was late.
- His explanation of a medical condition for the delay was considered and deemed reasonable by the Commission.

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<sup>5</sup> (*Canada (A.G.) v. Purcell*, 1 FC 644, 1995)

<sup>6</sup> Section 1 (1), *Reconsideration Request Regulations*.

<sup>7</sup> Section 1 (2), *Reconsideration Request Regulations*.

- It concluded that he did not demonstrate an ongoing intention to file the request because there was no communication from the Claimant throughout the period of delay regarding the decision.
- The Claimant had no reasonable chance of success with his appeal on the substantive issues because he was deemed unable to work by his own doctor in addition to his own statement that he could not work and therefore was unavailable for work.
- There would be no prejudice to the Commission's interests if an extension were granted because it has the requisite documentation in support of its original decision.

[19] I will now examine the factors in light of the Commission's submissions and the testimony and submissions of the Claimant.

**Factor #1: Did the Appellant have a reasonable explanation for requesting a longer period to file his request?**

[20] I find that the Claimant did not show a reasonable explanation for the delay. The Commission submitted that it was satisfied that the Claimant's medical condition was a reasonable explanation for the delay. I do not agree with the Commission on this factor.

[21] The Claimant submitted that he had made one mistake. He testified that when interviewed by the Commission in 2017, he told them that he was unable to work. He believes that the decision by the Commission to disqualify him and recover benefits paid on his original claim is based on this one statement. He claimed that contrary to what he said, he was able and available to work.

[22] The Claimant provided the following history. He was working on a road repair crew prior to being laid off in late 2016.

[23] The Claimant testified that he suffers from congestive heart failure, depression and anxiety. He was experiencing this medical condition in 2017. He stated his condition leaves him foggy and unable to think clearly and at times he experiences memory loss.

[24] The Claimant offered a medical report in support of his condition. The report issued in November 2017, states that the Claimant suffers from congestive heart failure. He has undergone

extensive testing and was expected to have acute exacerbations of his heart condition. The doctor clearly states that the Claimant will not be able to function at the workplace in any capacity.

[25] He was contacted by the Commission in November 2017, and during this interview he stated that he was unable to work. He claims that he meant to say that he was able to work and was available. He believes that this one statement is why the Commission issued the disqualification and overpayment of benefits.

[26] When he received the notice of disqualification and notice of overpayment in November 2017, he could not deal with it. Every time he thought about it, he became stressed and could not do anything. He testified that he does have good days and bad days. More recently, he was feeling better and he had spoken to a legal aid counsellor who suggested he make the request for reconsideration now.

[27] He added that he receives a Canada Pension Plan disability pension and works part-time. He admitted that he received a “notice of debt” monthly. He stated that he ignored these notifications.

[28] He stated that he received notification that there would be a garnishment of his wages to repay the overpayment. He noticed that he had approximately \$797.26 removed from his bank account. A letter explaining this action claimed that there would be no further immediate action taken. The Claimant elected not to challenge this garnishment action. He continued to receive monthly statements detailing his debt, but ignored them.

[29] More recently he received another letter informing him that there would be further garnishment action. He said that he only makes about \$212.00 a week and the letter claimed his wage would be garnished 25%. He says he cannot afford it.

[30] He added that he just wants to get this issue over with because it is causing him considerable stress. He says that he lives on a limited income and cannot afford legal counsel to assist him.

[31] The issue of the Claimant’s statements to the Commission are not at issue in this appeal. His concerns relate to the original decision of the Commission to disentitle him to benefits and

recover an overpayment. The issue of this appeal is whether the Claimant should be granted the extension of time to request that the Commission reconsider its original decision.

[32] Regarding the request of the Claimant for reconsideration, the Commission did consider the Claimant's explanation. It did determine that the medical condition offered by the Claimant as the reason for the delay was reasonable.

[33] I differ with the Commission on this point. I am not satisfied that the Claimant was so incapacitated by his condition that he could not have taken some form of action to contact the Commission regarding his situation. The medical report states that the Claimant has a serious heart condition and that he was unable to work because of it. The report does not make reference to anxiety or depression, although I am inclined to accept that someone facing his medical condition would experience these conditions as well, am not satisfied that they were the reason he did not take action sooner.

[34] He testified that he received a CPP pension and worked part-time. He would have had to have the capacity to apply for the pension and to seek out work during the period in question. Exercising that same capacity, he could have contacted the Commission and raised his concerns with the original decision before September 2019.

[35] I find that the real reason the Claimant did not contact the Commission sooner was because if he had done so, it would have caused him to face and accept the real prospect of having to repay the overpayment of benefits. He weighed the possibility that the Commission and the Canada Revenue Agency would take only limited action, or no action at all, and elected not to pursue the issue.

**Factor#2: Did the Claimant show a continuing intention to request the reconsideration?**

[36] I find that the Claimant has not shown a continuing intention to make the request.

[37] The Commission's position is that the Claimant took no action towards making a request for reconsideration. It asserts that he has not demonstrated a continuing intention to make the request.



[38] The Claimant was aware in November 2017, that his claim had been reassessed and as a result he received a disentitlement and notice of debt because of an overpayment. Whether these decisions by the Commission were justified or not, the Claimant had been given a clear decision and explanation. The letter also noted his rights to seek a reconsideration of the decision. The claimant testified that he took no action after receiving the decision of the Commission. Further, he testified that he received monthly notices of debt, which he ignored.

[39] Even after the first garnishment of \$797.26, he Claimant did not attempt to contact the Commission or seek assistance to prepare the request for reconsideration. Finally, when action was taken to recover the remaining overpayment through garnishment of his wages, he took action. He contacted a legal aid representative who informed him to make the request for redetermination.

[40] He claims that the reason he did not make his request earlier was because of his disability. His heart condition, anxiety and depression made it impossible for him to take action earlier. Only recently has he felt well enough to make the request.

[41] I find it more plausible that the Claimant was not motivated to take action sooner because there was no urgency in his mind. The Commission had only taken one action to recover the overpayment and noted in its correspondence to the Claimant that no further action would be taken immediately. Only once it became clear that further action to recover the overpayment would occur, did the Claimant then have sufficient motivation to seek assistance and make the request.

[42] I find no evidence that the Claimant had an ongoing intention of pursuing a request for reconsideration until he was faced with garnishment. He has not shown a continuing intention to request the reconsideration from the time of the notice of decision on the substantive matters.

[43] The legal test requires that all four factors set out in the Reconsideration Regulations<sup>8</sup> be met in order for the Claimant to be granted an extension of time to request reconsideration. The

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<sup>8</sup> Section 1(1), (2), *Reconsideration Request Regulations*

Claimant has not met the first two factors. There is no need for me to examine the two remaining factors.

[44] I am satisfied that the Commission exercised its discretion judicially. I can find no evidence that it acted in bad faith; acted with an improper purpose or motive; took into account an irrelevant factor; ignored a relevant factor; or acted in a discriminatory manner. There is no reason for me to intervene.

**CONCLUSION**

[45] The Claimant's appeal seeking an extension of time to make a request for reconsideration is dismissed.

Mark Leonard

Member, General Division - Employment Insurance Section

HEARD ON:	November 26, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	G. C., Appellant