



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. S. v Canada Employment Insurance Commission*, 2019 SST 1574

Tribunal File Number: GE-19-4241

BETWEEN:

J. S.

Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gary Conrad

DATE OF DECISION: December 29, 2019

REASONS AND DECISION

OVERVIEW

[1] The Claimant applied for Employment Insurance (EI) benefits and had a claim established effective June 1, 2003. The Claimant collected 12 weeks of medical benefits and then returned to work. She later lost her employment as her job was privatized by the government.

[2] Many years later the Claimant was awarded money in a settlement between her union and the government due to having lost her employment as a result of privatization.

[3] The Respondent informed the Claimant in July 2009 the money she received from the settlement was considered earnings and would be allocated back to her claim in 2003. This resulted in the Claimant owing EI money.

[4] A large amount of employees who received money through the union settlement and had it allocated by the Respondent and had to pay back money to EI, appealed the decision of the Respondent regarding the allocation. The Claimant was one of these people. The large amount of appeals were joined together in a representative appeal.

[5] The appeal went back and forth but in the end, it was decided that individuals affected by the Respondent's decision regarding the allocation of the union settlement money could ask the Respondent to reconsider their decision and once that decision was rendered, if they still disagreed, appeal it to the General Division of the Social Security Tribunal (Tribunal).

[6] The Claimant took advantage of this opportunity and requested the Respondent reconsider their decision to allocate her settlement money.

[7] The Respondent sent a letter to the Claimant on February 4, 2015, explaining to the Claimant they were upholding the decision that her settlement money was earnings, and should be allocated; but they altered the amount of earnings they allocated per week.

[8] The Claimant filed an appeal of that decision which was received by Tribunal on December 10, 2019.

[9] Under subsection 52(2) of the *Department of Employment and Social Development Act* (DESD Act), in no case may an appeal be brought to the General Division of the Tribunal more than one year after the day on which the Respondent's reconsideration decision was communicated to the Claimant.

[10] I must decide whether the Claimant's appeal was brought in time.

ANALYSIS

[11] I find the Respondent's reconsideration decision was communicated to the Claimant on February 16, 2015.

[12] I note the Claimant included a copy of the February 4, 2015, reconsideration decision letter in her notice of appeal¹, along with many other letters sent to her by the Respondent and Canada Revenue Agency over the years, including the January 9, 2015, letter informing the Claimant the Respondent had received her request for reconsideration. I find this supports the Claimant received the February 4, 2015, reconsideration decision letter sent to her by the Respondent.

[13] I note the Claimant had the same postal box number and postal code on her request for reconsideration² as was on the February 4, 2015, letter sent to the Claimant. I find this lends further support to the Claimant having received the reconsideration decision letter. I also note there is no evidence to support the February 4, 2015, reconsideration decision letter was not deliverable to the Claimant or was returned to the Respondent.

[14] I also note the Claimant states in her notice of appeal that she received reconsideration decisions in 2010, 2014, 2015, and onward. I find this statement supports she received the February 4, 2015, decision letter as it demonstrates she was receiving

¹ GD2-79

² GD3-36

mail sent from the Respondent and the reconsideration decision letter was sent in 2015, when she states she did receive reconsideration decisions.

[15] Regarding the consideration of whether the decision was communicated to the Claimant I find the cases of *Atlantic Coast Scallop Fishermen's Assn. v Canada (Minister of Fisheries & Oceans)*, A-162-95, and *Peace Hills Trust Co. v Moccasin*, 2005 FC 1364, instructional.

[16] In *Atlantic Coast*, the Court stated that positive action is required on the part of the decision maker in order to communicate the decision to the parties directly affected. I find the decision maker, the Respondent, did take positive action, by communicating to the Claimant the decision through the decision letter dated February 4, 2015.

[17] In *Peace Hills Trust* the Court stated that as "...the Applicant was advised of the substance of the Band's position...this notification was sufficient to put the Applicant on notice that a decision had been made." I find that in the February 4, 2015, letter the substance of the Respondent's decision under 112 of the Act was conveyed to the Claimant in that it told her what monies had been allocated, to what weeks they had been allocated and in what amounts they had been allocated and what her new overpayment was. The letter also told her of her appeal rights to the Tribunal and the timeline in which to do so.

[18] I find the Claimant brought her appeal to the General Division of the Tribunal on December 10, 2019, as noted by the electronic received date on the appeal documentation.

[19] I find that allowing for a reasonable mailing time, the Claimant would have received the February 4, 2015, decision letter on February 16, 2015. However, even allowing that reasonable mailing time the Claimant's appeal is still outside of the year timeframe.

[20] I find that more than one year passed between when the Respondent's reconsideration decision was communicated to the Claimant and when her appeal was filed.

[21] I have great sympathy for the financial situation the Claimant finds herself in and the struggles to find work and the stress her family is going through, but I must apply subsection 52(2) of the DESD Act which clearly states that in no case may an appeal be brought more than one year after the reconsideration decision was communicated to the Claimant.

CONCLUSION

[22] The appeal to the General Division of the Tribunal was not brought in time and therefore will not proceed.

Gary Conrad
Member, General Division - Employment Insurance Section