



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MC v Canada Employment Insurance Commission*, 2021 SST 81

Tribunal File Number: GE-21-157

BETWEEN:

**M. C.**

Appellant (Claimant)

and

**Canada Employment Insurance Commission**

Respondent (Commission)

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

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DECISION BY: Linda Bell

HEARD ON: February 23, 2021

DATE OF DECISION: February 26, 2021

## **DECISION**

[1] I am dismissing the appeal. The Commission acted properly when refusing the Claimant an extension of time to file his reconsideration request.

## **OVERVIEW**

[2] In 2017, the Commission conducted a review of the Claimant's Employment Insurance (EI) benefits. On August 25, 2017, the Commission wrote to the Claimant telling him that they determined he was not entitled to the benefits he collected for the period from November 22, 2015, to May 7, 2016. This is because he worked and had earnings during these weeks. This decision results in an overpayment of benefits. The Commission also states in their August 25, 2017, decision letter that they imposed a \$3,354.00 penalty and a violation classified as very serious.

[3] On December 4, 2020, the Commission received a request for reconsideration from the Claimant. This is more than three years and three months after they issued their August 25, 2017, decision letter. The Commission refused to reconsider this decision because the Claimant submitted his reconsideration request late, after the allowable 30-day period.

[4] The Commission says the Claimant does not meet the criteria for an extension of time to request reconsideration. The Claimant disagrees and says he only knew about the monetary penalty. He states he never knew that the violation would be an "hourly penalty," preventing him from qualifying for EI benefits.

## **ISSUE**

[5] Did the Claimant submit his reconsideration request late?

[6] If yes, did the Commission exercise its discretion judicially (properly) when it denied him an extension of time to request reconsideration?

## ANALYSIS

### **Did the Claimant submit his reconsideration request late?**

[7] Yes, I find that the Claimant submitted his reconsideration request late. If a claimant disagrees with a decision of the Commission, they have 30 days from the date the decision was communicated to them, to request a reconsideration of that decision.<sup>1</sup>

[8] The Claimant states that he received the August 25, 2017, decision letter. He says he wasn't worried about the violation because he was always employed back then. He argued that he was also getting over the X fire that occurred in May 2016, so his focus was on paying off the overpayment and penalty. He asks that the violation be removed so he can qualify for EI benefits. He argues that it is hard to find work right now because of the COVID-19 pandemic.

[9] I find that the evidence supports a finding that the Commission communicated their decision to the Claimant on or around September 4, 2017, ten days after they mailed it. The Commission provided evidence that they sent their August 25, 2017, decision and notice of violation to the Claimant via mail. The Claimant confirms that he received this decision letter. So, I find that the Claimant received the notice of the violation on or around September 4, 2017.

[10] The Commission received the Claimant's reconsideration request on December 4, 2020. This is three (3) years and three (3) months after the Commission communicated their decision to the Claimant on September 4, 2017. As set out above, the Claimant had 30 days to request reconsideration. Therefore, I find that the Claimant submitted his reconsideration request late.

### **Did the Commission exercise its discretion properly?**

[11] Yes, I find that the Commission exercised its discretion properly when denying the Claimant an extension of time to submit his reconsideration request.

[12] The law says the Commission may extend the 30-day deadline to request reconsideration, if it decides that a claimant had a reasonable explanation for the delay and a continuing intention

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<sup>1</sup> The timeline is set out in section 112(1)(a) of the *Employment Insurance Act (Act)*.

to request the reconsideration.<sup>2</sup> This means that a claimant has shown they intended to ask for reconsideration throughout the entire period of the delay. In this case, the entire period of delay is from September 4, 2017, to December 4, 2020.

[13] In some cases where the period of delay is more than 365 days, additional criteria may apply.<sup>3</sup> The additional criteria only applies where the claimant has provided a reasonable explanation for the delay and has shown a continuing intention to request reconsideration.

[14] The Commission's decision to extend the deadline is discretionary.<sup>4</sup> This means I can only change the decision if the Commission did not exercise their discretion properly.<sup>5</sup> If the Commission acted properly, then I may not change its decision to deny the Claimant an extension of time to request reconsideration.

[15] If I find the Commission did not exercise its discretion properly, then I may step into the Commission's role and decide whether the Claimant has a reasonable explanation for the delay and whether he has shown that he had a continuing intention to request reconsideration. I would also determine whether the Claimant meets the additional criteria when applicable.

[16] The Claimant states that he assumed everything was okay with the Commission once he paid off the overpayment and penalty, so he forgot about their decision and the violation. This was until he tried to collect EI benefits in 2020. This is when he found out that he did not have enough hours of insurable employment to qualify for EI benefits.

[17] The Commission states the Claimant has not provided a reasonable explanation for the lengthy delay in submitting his reconsideration request. They say he told them that he received their decision in 2017, but he took no action at that time to request reconsideration. As stated above, I find that the Commission communicated their decision to the Claimant on or around September 4, 2017. The Claimant did not request reconsideration at that time because he says he

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<sup>2</sup> As listed in section 1(1) of the *Reconsideration Request Regulations*.

<sup>3</sup> Section 1(2) of the *Reconsideration Request Regulations* states the circumstances where the Commission must also be satisfied that the reconsideration request has a reasonable chance of success, and that no prejudice would be caused to the Commission or a party by allowing a longer period to make the request.

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

<sup>5</sup> *Canada (Attorney General) v. Purcell*, A-694-94 provides that acting properly means the Commission considered all relevant factors, did not consider irrelevant factors, acted in good faith, and did not act in a discriminatory manner when it made its decision.

was not concerned about qualifying for EI benefits because he always had employment. The Commission states that this is not a reasonable explanation for the delay in filing his request for reconsideration.

[18] The Commission also considered that the Claimant failed to demonstrate a continuing intention to request reconsideration. The Commission says they have no record of any conversations or communication with the Claimant disputing the violation, prior to November 26, 2020. They say that their information shows that the Claimant is familiar with collecting EI benefits. He also established one initial claim since they issued the violation on August 25, 2017.

[19] Upon further clarification, the Commission provided detailed information about the number of applications for EI benefits they received from the Claimant since August 25, 2017.<sup>6</sup> The Claimant established an initial claim for EI benefits effective August 19, 2018. He submitted three subsequent applications for which he was not able to establish a benefit period due to insufficient hours. The Claimant submitted those applications for EI benefits on March 18, 2020, September 28, 2020, and November 14, 2020, respectively. The Commission notes that the Claimant was missing his last ROE for his March 18, 2020, application.

[20] I recognize that the Claimant had difficulty with obtaining his last ROE after he submitted his application on March 18, 2020. I agree that he requires his last ROE, or an interim ROE, to determine the number of insurable hours he has in order to qualify for benefits. However, missing his last ROE on March 18, 2020, does not change the fact that he made no effort to dispute the violation within 30 days of receiving the August 25, 2017, decision letter.

[21] The Claimant submits a copy of a decision issued by a member of the Tribunal's Appeal Division (AD). He says his case is similar to this one because he asked the Commission to remove the violation. It states in this AD decision that the Commission removed the violation for that claimant.<sup>7</sup> As explained during the hearing, this AD decision denies the appellant leave to appeal. The AD member states in that decision that the Commission removed the violation. However, I see no evidence that this AD decision involves similar facts for a delay in requesting reconsideration, as is the case for the Claimant. As stated during the hearing, I must only

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<sup>6</sup> See GD6-1.

<sup>7</sup> See *PM v Canada Employment Insurance Commission*, 2020 SST 1072.

consider the facts of the Claimant's case when determining whether the Commission acted properly when denying him an extension of time to request reconsideration.

[22] Regarding the Claimant's argument that he had to recover from the May 2016 X fire, I do not accept that this is a relevant reason for his delay in requesting reconsideration. Rather, I find the Claimant's evidence that he wasn't worried about the violation to be probable, given the circumstances and evidence he presented. Namely, that he wasn't worried about the violation because he was always working and his focus was on paying off the overpayment and penalty. Further, I recognize that the Claimant states he was "in treatment" around March 2020. While this may have added a few weeks or months to his delay, this treatment was not until almost 2 ½ years after the allowable 30-day period to request reconsideration had expired.

[23] The Claimant states that he did not realize there was an hourly penalty as well as a monetary penalty. However, the Claimant repeatedly states he received the August 25, 2017, decision letter. That decision letter includes the notice of violation that clearly states the following:

As a result of this notice of violation, **you will need more insurable hours or, if you are a fisher, more insurable earnings, to qualify for benefits.**<sup>8</sup>

[24] After consideration of the evidence, as set out above, I find the Commission made their decision properly when denying the Claimant more time to request reconsideration of their August 25, 2017, decision. The Claimant presented no evidence that the Commission acted improperly when they made their decision to deny him an extension of time to request reconsideration. Rather, I find the evidence supports that the Commission considered all relevant factors when determining the Claimant failed to provide a reasonable explanation for the entire period of delay in requesting reconsideration.

[25] Further, there is evidence that the Commission considered all relevant factors when determining that the Claimant failed to show a continuing intention to request reconsideration. So, the Commission acted properly when refusing the Claimant an extension of time to submit

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<sup>8</sup> Reproduced as written on page GD3-23.

his reconsideration request. This means I cannot interfere with or change the Commission's decision to deny him an extension of time to request reconsideration.

[26] Although the period of delay is more than 365 days, there is no need to assess the additional criteria.<sup>9</sup> This is because the Claimant has not proven he had a reasonable explanation for the delay or a continuing intention to request reconsideration.

[27] Although the Claimant may perceive this as an unjust result, my decision is not based on fairness. Rather, my decision is based on the facts before me and the application of the EI law. There are no exceptions. I cannot interpret or rewrite the *Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.<sup>10</sup>

## CONCLUSION

[28] The Commission acted properly when refusing the Claimant an extension of time to request reconsideration. This means I am dismissing the appeal.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	February 23, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. C., Appellant (Claimant)

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<sup>9</sup> See section 1(2) of the *Reconsideration Request Regulations*.

<sup>10</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301.