



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *ZW v Canada Employment Insurance Commission*, 2020 SST 1202

Tribunal File Number: GE-20-2083

BETWEEN:

**Z. W.**

Claimant

and

**Canada Employment Insurance Commission**

Commission

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

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DECISION BY: Audrey Mitchell

HEARD ON: November 9, 2020

DATE OF DECISION: November 12, 2020

## **DECISION**

[1] The appeal is dismissed. The Commission exercised their discretion in a judicial manner when they denied the Claimant's requests to extend the 30-day reconsideration period.

## **OVERVIEW**

[2] The Claimant received for employment insurance (EI) benefits. The Commission later started an investigation. The Claimant did not respond to the Commission's requests for more information. They determined that he knowingly made false representations. They also found that he did not prove that he was available for work. The Commission sent him a decision letter to this effect. The Claimant received the letter on December 17, 2019. This was one day before he left Canada to have surgery. The Claimant asked the Commission to reconsider their decision. The date of the request is June 21, 2020. The Commission says the Claimant's reason for the delayed request does not meet the requirements of the law.

## **ISSUE**

[3] Did the Commission exercise their discretion in a judicial manner when they denied the Claimant's request to extend the 30-day period to request reconsideration of their decision?

- Did the Claimant make a request to the Commission for a reconsideration of their decision within the required time?
- Did the Claimant give a reasonable explanation for requesting a longer period?
- Has the Claimant demonstrated a continuing intention to request reconsideration?

## **ANALYSIS**

**Issue: Did the Commission exercise their discretion in a judicial manner when they denied the Claimant's request to extend the 30-day period to request reconsideration of their decision?**

[4] A person who is the subject of a decision of the Commission can ask them to reconsider their decision. They must do so within 30 days after the day the Commission communicates the

decision to them.<sup>1</sup> The Commission can allow more time for a request for reconsideration of a decision.<sup>2</sup> If they allow more time, they must be satisfied that there is a reasonable explanation for asking for a longer period. They must also be satisfied that the person has demonstrated a continuing intention to request reconsideration.<sup>3</sup>

[5] The Federal Court has confirmed the discretionary nature of the Commission's decision concerning an extension of time for reconsideration request.<sup>4</sup> Discretionary decisions of the Commission should not be disturbed unless they failed to act in a judicial manner. This means acting in good faith, having regard to all the relevant factors and ignoring any irrelevant factors.<sup>5</sup>

*Did the Claimant make a request to the Commission for a reconsideration of their decision within the required time?*

[6] I find that the Claimant did not make a request to the Commission for reconsideration of their decision within the required time.

[7] The Claimant does not dispute that he did not request reconsideration within the 30-day period. The Commission notified him of their initial decision in a letter dated November 22, 2019. The Claimant says he got this letter on December 17, 2019. The Claimant sent the Commission a request for reconsideration dated June 21, 2020. The Commission stamped the Claimant's request for reconsideration as received on July 24, 2020.

[8] I find that the Claimant requested reconsideration approximately seven months after the Commission communicated their decision to him. I find that this is beyond the required the 30-day period.

*Did the Claimant give a reasonable explanation for requesting a longer period?*

[9] I do not find that the Claimant gave a reasonable explanation for requesting a longer period.

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<sup>1</sup> Paragraph 112(1)(a) of the *Employment Insurance Act*.

<sup>2</sup> Paragraph 112(1)(b) of the *Employment Insurance Act*.

<sup>3</sup> Subsection 1(1) of the *Reconsideration Regulations*.

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

<sup>5</sup> *Canada (AG) v. Sirois*, A-600-95; *Canada (AG) v. Chartier*, A-42-90

[10] The Claimant testified that he read the Commission's initial letter that he received on December 17, 2019. He said that he understood that he had 30 days to request reconsideration. He states that he had been very ill and left Canada on December 18, 2019, to get medical attention. He had surgery outside Canada on December 30, 2019, and returned to Canada on January 15, 2020.

[11] The Claimant testified that he could not request reconsideration before leaving Canada. He explained that he had a lot to do before leaving to go to his home country. He said that for this reason, he did not have time to respond to the Commission's letter. He added that he was in so much pain, he could not respond.

[12] The Claimant was in transit to his home country for approximately two days. He arrived on December 20, 2019. I asked the Claimant what he did in between his arrival to his home country and the date of his surgery. He said that he relaxed a bit and went through a series of tests.

[13] After arriving in his home country, the Claimant had 10 days before he had his surgery. In addition, I accept as fact that he did not return to Canada until January 15, 2020. I find that for the pre- and post-surgery periods until he returned to Canada, the Claimant has a reasonable explanation for not requesting reconsideration. I do so because I find it reasonable for the Claimant to focus on his illness and initial recovery.

[14] The Claimant sent the Commission a reconsideration request dated June 21, 2020. The Commission received it on July 24, 2020. I asked the Claimant why he did not send his request for reconsideration sooner. He said that when he returned to Canada, he was very weak. He said that it took him three to four months before he saw a little improvement. He added that it took effort to get the evidence needed to reply to the Commission.

[15] I asked the Claimant when he returned to work after arriving in Canada. He said that he returned to work on January 15, 2020. The Claimant said he worked at home 90% of the time. He said that he went into work in January 2020 to let his boss know that he was back, but said that he did not do any work on that day.

[16] Since the Claimant testified that he worked from home 90% of the time when he returned to Canada, I asked him what he did. He responded that actually, he did not work from January to June 2020, but only attended team meetings. He said that normally, team meetings occurred once a week, and they did not last very long.

[17] I do not find this part of the Claimant's explanation for the delay in requesting reconsideration reasonable. I am not persuaded that the Claimant's recovery from surgery prevented him from making the effort to request reconsideration. For example, although he said he slept on the plane, the Claimant was able to travel for approximately two days on his return to Canada. He was able to go to his workplace to meet with his boss when he returned to Canada. He attended team meetings from home. The Claimant later testified that if he did not start working right away when he returned to Canada, he would lose his job. I find that this undermines his earlier testimony that actually he did not work from January to June 2020.

[18] The Claimant said that he had to gather evidence to submit his request for reconsideration. I asked him if he tried to contact the Commission to explain his situation. He said that he did not. The reason he gave is that the service given by Service Canada was not pleasant. He also said that his English is not good.

[19] I find that the Claimant could have contacted the Commission as soon as he returned to Canada to explain his situation, request reconsideration providing an explanation, and follow it with the evidence when he could. An interpreter assisted the Claimant at the hearing. Because of this, so I accept that speaking to the Commission without help would be difficult. However, I find that he could have asked for help, as he likely did to prepare his request for reconsideration and notice of appeal, both of which contain written narratives.

[20] For the reasons noted above, I do not find that the Claimant gave a reasonable explanation from January 15, 2020, for requesting a longer period to request reconsideration of the Commission's initial decision

*Has the Claimant demonstrated a continuing intention to request reconsideration?*

[21] I do not find that the Claimant demonstrated a continuing intention to request reconsideration.

[22] The Claimant delayed approximately five months from the time he returned to Canada on January 15, 2020 to sign a request for reconsideration. In the intervening period, he did not contact the Commission. He said that he needed to gather evidence. The Claimant testified that at the beginning of June 2020, he went to get his computer from a friend. He said that he left his computer with this friend in 2016 when he moved to his current residence. The Claimant stated that he was too sick before June 2020 to get his computer.

[23] As noted above, the Claimant did not try to contact the Commission to explain his situation. He did not testify to any effort to try to get either his computer or information from it before the beginning of June 2020. The Claimant said that he could not drive to his former city of residence. However, there is no evidence before me that he tried to take a bus, train or plane to do so to get the computer. Since he had travelled for two days right after his surgery to return to Canada, I find it reasonable that he could have travelled up to several hours to his former residence.

[24] I do not find that the Claimant's actions were those of someone who wanted to challenge the Commission's initial decision. For this reason, I am not satisfied that he has shown that he had a continuing intention to request reconsideration.

[25] I find no reason to disturb the Commission's decision. I find that the Commission exercised their discretion in a judicial manner when they denied the Claimant's request to extend the 30-day reconsideration period.

**CONCLUSION**

[26] The appeal is dismissed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	November 9, 2020
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	Z. W., Claimant

