



[TRANSLATION]

Citation: *BC v Canada Employment Insurance Commission*, 2021 SST 323

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: B. C.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (415189) dated February 10, 2021 (issued by Service Canada)

Tribunal member: Normand Morin

Type of hearing: Teleconference
Hearing date: May 14, 2021
Hearing participant: Appellant
Decision date: June 4, 2021
File number: GE-21-444

Decision

[1] The appeal is dismissed. I find that the refusal of the Canada Employment Insurance Commission (Commission) to extend the 30-day period to request a reconsideration is justified.¹

Overview

[2] On January 21, 2021, the Appellant requested a reconsideration of a decision by the Commission dated February 20, 2017.²

[3] On February 10, 2021, the Commission informed her that, when she requested a reconsideration, more than 30 days had passed since a decision affecting her had been communicated to her. The decision was sent to her on February 25, 2017.³ The Commission also told her that she had not given any explanation for her late reconsideration request. It told her that, as a result, it would not reconsider its decision.⁴

[4] The Appellant explains that she requested a reconsideration of the Commission's decision after the deadline because she did not know that the amount she owed the Commission included a penalty, in addition to the amount of the benefit overpayment she had to repay. She explains that, when she received information from the Commission about the amount of money she owed, she became aware of a total amount she had to repay, but she did not know that the amount also included a penalty. According to the Appellant, it was on January 19, 2021, when she went to a Service Canada Centre, that she learned that a penalty had been imposed on her and that she also had to pay the amount of that penalty. She says she finds the penalty amount to be very high, and she is asking that the amount be reduced. On March 16, 2021, the

¹ See section 112 of the *Employment Insurance Act* (Act) and section 1 of the *Reconsideration Request Regulations*.

² See GD3-11 to GD3-13, GD3-15, and GD3-16.

³ In the letter to the Appellant dated February 10, 2021, the Commission referred to a decision dated February 25, 2017, even though the notice of decision is dated February 20, 2017—GD3-11 to GD3-13. The notice of debt sent to the Appellant is dated February 25, 2017—GD3-14.

⁴ See GD2-9 and GD3-21.

Appellant challenged the Commission's February 10, 2021, decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issue

[5] I have to determine whether the Commission's refusal to extend the 30-day period to request a reconsideration is justified.⁵

Analysis

[6] A claimant or other person who is the subject of a decision of the Commission can make a request to the Commission in the prescribed form and manner for a reconsideration of that decision at any time within 30 days after the day on which a decision is communicated to them, or any further time that the Commission may allow.⁶

[7] The Commission can allow a longer period for a reconsideration request if it is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.⁷

[8] 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, in the following "particular circumstances": the reconsideration request (a) is made after the 365-day period after the day on which the decision was communicated to the person; (b) is made by a person who submitted another application for benefits after the decision was communicated to the person; or (c) is made by a person who has requested the Commission to rescind or amend the decision under section 111 of the *Employment Insurance Act*.⁸

⁵ See section 112 of the Act and section 1 of the *Reconsideration Request Regulations*.

⁶ See section 112(1) of the Act.

⁷ See section 1 of the *Reconsideration Request Regulations*.

⁸ See section 1(2) of the *Reconsideration Request Regulations*.

[9] I note that, given the issue raised in this file, my role is limited to determining whether the Commission exercised its discretion judicially when it denied the Appellant an extension of the 30-day period to request a reconsideration.⁹

[10] The Federal Court of Appeal (Court) has established the principle that discretionary decisions of the Commission should not be interfered with, unless the Commission did not exercise its discretion judicially.¹⁰

[11] The Court has also defined “judicially” as acting in good faith, taking into account all relevant factors and ignoring any irrelevant factors.¹¹

[12] The Federal Court has confirmed that the Commission’s decision whether to extend the time to request a reconsideration is discretionary.¹²

[13] In this case, I find that the Commission has shown that it exercised its discretion judicially when it denied the Appellant an extension of the 30-day period to request a reconsideration.

[14] The Commission argues as follows:

- a) The Appellant knew about the Commission’s February 20, 2017, decision, and she waited until February 1, 2021,¹³ to request a reconsideration.¹⁴
- b) The Appellant did not give a reasonable explanation for requesting a longer period or demonstrate a continuing intention to request a reconsideration. A

⁹ See section 112 of the Act and section 1 of the *Reconsideration Request Regulations*.

¹⁰ The Court established or reiterated this principle in the following decisions: *Sirois*, A-600-95; and *Chartier*, A-42-90.

¹¹ See the following decisions: *Sirois*, A-600-95; and *Chartier*, A-42-90.

¹² See the Federal Court decision in *Daley*, 2017 FC 297.

¹³ In its arguments, the Commission referred to February 1, 2021, as the date the Appellant had made her reconsideration request. However, in a summary of a conversation with the Appellant dated February 8, 2021, the Commission indicated that it had received the request on January 21, 2021—GD3-17. I accept that the request was made on January 21, 2021.

¹⁴ See GD4-2, GD4-3, and GD6-2.

lot of time passed between when the Appellant was informed of the decision and when she requested a reconsideration—almost four years.¹⁵

- c) The Appellant was informed of the decision affecting her in a letter to her dated February 20, 2017, and through a notice of debt from the Canada Revenue Agency (CRA) that was sent to her on February 25, 2017. Even though the Appellant says she did not receive the February 20, 2017, notice of decision, she admitted to receiving all the notices of debt and confirmed that she was aware that a decision involving a penalty had been made in her case, when she set up a repayment arrangement on March 20, 2017.¹⁶
- d) The 30-day period to request a reconsideration of the Commission's decision started when the decision was first communicated to the Appellant, that is, when she received the February 20, 2017, notice of decision, or when she received the February 25, 2017, notice of debt, if she did not receive the notice of decision.¹⁷
- e) The Appellant had known that a decision involving a monetary penalty had been made in her Employment Insurance file since receiving the notice of debt issued on February 25, 2017. The "recovery notes" (CRA's recovery department) confirm that the Appellant was aware of this debt on March 20, 2017, because she contacted the CRA to set up an arrangement to repay it. These notes also show that, after March 20, 2017, the Appellant contacted the CRA several times about repaying this debt and that she was also in contact with the Commission. Additionally, these notes show that, on March 20, 2019, the Appellant was given the telephone number to challenge the penalty the Commission had imposed on her.¹⁸

¹⁵ See GD4-2 to GD4-4.

¹⁶ See GD4-3 and GD6-2.

¹⁷ See GD4-3.

¹⁸ See GD6-1 to GD6-16.

- f) The Appellant requested a reconsideration more than 365 days after she was informed of the decision.¹⁹ For this reason, the Commission has to determine whether the request has a reasonable chance of success, and whether no prejudice would be caused to the Commission or a party by allowing a longer period to make such a request.²⁰
- g) No prejudice would be caused by allowing a longer period to make the reconsideration request, but the Commission is not satisfied that the request has a reasonable chance of success.²¹
- h) The Appellant failed to report that she had worked and received earnings for 15 weeks, between March 15, 2015, and August 22, 2015. During the Commission's investigation, the Appellant said she agreed with the information obtained from her employers. The adjustment of her earnings resulted in a net overpayment of \$4,803.00. The Appellant is not requesting a reconsideration of that decision.²²
- i) The Appellant must have known she had worked when she reported the opposite. Even though she explained that she had not reported her earnings because she had not received them, the Appellant reported that she had not worked, which is not true. The Commission determined that the Appellant had knowingly made false statements. A penalty of 50% of the overpayment amount was imposed on her.²³
- j) A reconsideration of the penalty decision would have little chance of success because the overpayment is not disputed and because the false statements were made knowingly. In addition, there is no error in the calculation of the

¹⁹ See section 1(2) of the *Reconsideration Request Regulations*.

²⁰ See GD4-2 and GD4-4.

²¹ See GD4-2 to GD4-4.

²² See GD4-4.

²³ See GD4-4.

overpayment and of the penalty, and there seem to be no mitigating circumstances in the Appellant's case.²⁴

- k) The Commission argues that it exercised its discretion judicially²⁵ in denying the Appellant an extension of the 30-day period to request a reconsideration because it considered all the relevant circumstances when it refused her delay in making her request.²⁶

[15] The Appellant's testimony and statements to the Commission indicate the following:

- a) The Appellant says it is possible she received the Commission's February 20, 2017, letter informing her that a penalty had been imposed on her for making false statements and that she had 30 days to request a reconsideration of that decision.²⁷ She says it is possible she received the letter but does not remember it or did not read it. The Appellant indicates that the letter was sent to her home address. In her statement to the Commission on February 8, 2021, and in her notice of appeal submitted on March 16, 2021, the Appellant indicated that she had not received the letter.²⁸
- b) In her statement to the Commission on February 8, 2021, and in her notice of appeal, the Appellant mentioned receiving a notice of debt from the Commission. In her statement on February 8, 2021, she said she had always received the notices of debt from the Commission.²⁹
- c) The Appellant explains that she knew she had to repay an amount for benefits that had been paid to her. However, she did not think that she also

²⁴ See GD4-4.

²⁵ See section 112 of the Act.

²⁶ See GD3-19, GD3-20, and GD4-5.

²⁷ See GD3-11 to GD3-13.

²⁸ See GD2-5, GD3-17, and GD3-18.

²⁹ See GD2-5, GD3-17, and GD3-18.

had to pay a penalty on top of repaying the amount of the benefit overpayment.

- d) The Appellant explains that, during negotiations with the CRA's recovery department on March 20, 2017, to make a payment arrangement to repay the amount owing, she thought all she had to repay was the amount of the benefit overpayment. She says she became aware of only a total amount to be repaid.
- e) On January 19, 2021, the Appellant went to a Service Canada Centre after receiving statements of account showing that an amount of approximately \$2,400.00—the penalty amount—also had to be repaid.³⁰ She wanted to know why she still had such an amount to repay. That was when a Commission agent explained the penalty amount to her and the fact that she had to repay it too, on top of the benefit overpayment. The Appellant says she did not learn that a penalty had been imposed on her until January 19, 2021.³¹
- f) In her statement to the Commission on February 8, 2021, the Appellant indicated that she was aware she had a debt because of a benefit overpayment and that the debt also included a penalty of \$2,402.00 that had been imposed on her. She mentioned being informed of these two amounts when making an arrangement to repay the amount she owed.³²
- g) The Appellant says she knows she has to pay a penalty, given the error she made in her claimant reports.³³ She is finding it hard to repay the penalty amount and finds the amount too high. She feels that imposing a penalty of

³⁰ See the notice of debt addressed to the Appellant, dated February 25, 2017. This document indicates that a penalty of \$2,402.00 was imposed on her—GD3-14.

³¹ See GD3-15 and GD3-16.

³² See GD3-17 and GD3-18.

³³ See GD3-16.

50% of the benefit overpayment amount on her is excessive. She would like the penalty amount to be cut in half, for example.³⁴

[16] In this case, the evidence shows that the Appellant did not meet the 30-day deadline to request a reconsideration of the Commission's February 20, 2017, decision.³⁵

[17] I find it more likely than not that the Appellant received the Commission's February 20, 2017, notice of decision.³⁶ In her statement to the Commission on February 8, 2021, and in her notice of appeal, the Appellant mentioned that she had not received the Commission's February 20, 2017, letter.³⁷ However, at the hearing, she said it was possible she had received the notice but that she had not read it. I find that the decision was communicated to her on or about February 20, 2017.

[18] I also accept the Appellant's statement that she had received all the notices of debt from the Commission.³⁸ So, I find that she received the February 25, 2017, notice of debt.

[19] The evidence on file also shows that, on March 20, 2017, the Appellant contacted the CRA's recovery department to make an arrangement to repay her debt.³⁹

[20] After March 20, 2017, the Appellant contacted the CRA several times about repaying this debt, and she was also in contact with the Commission.⁴⁰

[21] Additionally, on March 20, 2019, the Appellant was given the telephone number to challenge the penalty the Commission had imposed on her.⁴¹

³⁴ See GD3-17 and GD3-18.

³⁵ See GD3-11 to GD3-13.

³⁶ See GD3-11 to GD3-13.

³⁷ See GD2-5, GD3-17, and GD3-18.

³⁸ See GD2-5, GD3-17, and GD3-18.

³⁹ See GD6-2 to GD6-4.

⁴⁰ See GD6-1 to GD6-16.

⁴¹ See GD6-2, GD6-3, and GD6-16.

Reasonable explanation

[22] I find that the Appellant did not give a reasonable explanation for her delay in requesting a reconsideration of the Commission's February 20, 2017, decision.

[23] I find that the Appellant had the opportunity to read the Commission's February 20, 2017, letter informing her that a penalty had been imposed on her for making false statements and that she had 30 days to request a reconsideration of that decision.⁴²

[24] On March 20, 2017, when she negotiated an arrangement with the CRA to work out the details for repaying the amount of money she owed the Commission, the Appellant had the opportunity to find out about the nature of the amount she had to repay.

[25] I point out that, in her statement to the Commission on February 8, 2021, the Appellant mentioned being informed that she had a benefit overpayment and a penalty to repay on March 20, 2017, when making an arrangement to repay the amount she owed.⁴³

[26] So, I do not accept the Appellant's explanation that it was not until after she had received statements of account showing that she also had an outstanding balance of approximately \$2,400.00, and after she had gone to a Service Canada Centre on January 19, 2021, that she learned that it was the amount of the penalty that had been imposed on her.

[27] I also point out that the evidence on file shows that, on March 20, 2019, the Appellant was given information to help her challenge the penalty the Commission had imposed.

⁴² See GD3-11 to GD3-13.

⁴³ See GD3-17 and GD3-18.

[28] In my view, when the Commission made its decision on February 20, 2017, there was nothing stopping the Appellant from requesting a reconsideration within the 30-day deadline.

[29] I find that, at the hearing, the Appellant provided no new information showing that she had been unable to do so.

[30] I agree with the Commission's finding that the Appellant had not given a reasonable explanation for her delay in requesting a reconsideration.

Continuing intention to request a reconsideration

[31] I find that the Appellant has not shown that she had a continuing intention to request a reconsideration of the February 20, 2017, decision.

[32] I find that the Appellant had several opportunities to request a reconsideration of this decision after February 20, 2017, but that she chose not to take advantage of them. It was not until January 21, 2021, that the Appellant took steps to that end.

[33] The February 20, 2017, letter informed the Appellant that she had 30 days from the date of that letter to request a reconsideration.⁴⁴

[34] On March 20, 2017, after receiving a notice of debt dated February 25, 2017, the Appellant made an arrangement with the CRA to repay the amount she owed the Commission. I find that, by making that arrangement, the Appellant also knew that the amount she had to repay included a penalty. I find that, in making that arrangement, the Appellant was choosing not to request a reconsideration of the February 20, 2017, decision.

[35] The Appellant also contacted the CRA's recovery department several times after March 20, 2017, about the repayment she had to make.

⁴⁴ See GD3-11 to GD3-13.

[36] Additionally, on March 20, 2019, the Appellant obtained specific information to challenge the penalty the Commission had imposed.

[37] I do not accept the Appellant's explanation that it was not until January 2021, when she went to a Service Canada Centre, that she learned that a penalty had been imposed on her and that, when that decision had been made, on February 20, 2017, she had 30 days to request a reconsideration.

[38] I find that the Commission properly determined that the Appellant had not demonstrated a continuing intention to request a reconsideration of its February 20, 2017, decision, noting that she had waited almost four years to make this request.⁴⁵

Reasonable chance of success and prejudice to the parties

[39] Given that the Appellant requested a reconsideration more than 365 days after she was informed of the February 20, 2017, decision, I find that the Commission also considered the fact that the request did not have a reasonable chance of success. In addition, the Commission considered the fact that no prejudice would be caused to the Commission or a party by allowing a longer period.

[40] I find that, at the hearing, the Appellant provided no new, relevant evidence on the alleged false statements. The Appellant's arguments focused mainly on the fact that she finds the penalty amount too high and wants the amount reduced. She also raised that fact that she had made an error when completing her claimant reports.

The Commission's discretion

[41] I am of the view that the Commission exercised its discretion judicially when it denied the Appellant an extension of the 30-day period to request a reconsideration because it considered all the relevant circumstances when it refused her delay in making her request.

⁴⁵ See GD4-3.

[42] I find that, in making its decision, the Commission considered all relevant factors and ignored irrelevant factors.

[43] These factors refer to the following aspects: the lack of a reasonable explanation from the Appellant for her delay in requesting a reconsideration, the fact that she did not have a continuing intention to request a reconsideration, the fact that her request did not have a reasonable chance of success, and the fact that no prejudice would be caused to the Commission or a party by allowing a longer period.

[44] Because I give no weight to the Appellant's explanation that it was not until January 2021, when she went to a Service Canada Centre, that she learned that she also had to pay a penalty on top of repaying the amount of the benefit overpayment, I find it to be an irrelevant factor that the Commission did not need to consider.

[45] I do not accept the Appellant's explanation that the penalty amount is too high in her opinion, and that the amount should be reduced. I find that this issue is not a relevant factor in determining whether to grant the Appellant an extension of time to request a reconsideration.

[46] I also find that the Appellant has failed to show that the Commission relied on irrelevant factors in refusing to extend the 30-day period to request a reconsideration.

[47] I find that the Commission exercised its discretion judicially when it denied the Appellant an extension of time to request a reconsideration.

Conclusion

[48] I find that the Commission's refusal to extend the 30-day period to request a reconsideration is justified.

[49] This means that the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section