



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SS v Canada Employment Insurance Commission*, 2021 SST 252

Tribunal File Number: GE-21-312

BETWEEN:

S. S.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent/Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Suzanne Graves

HEARD ON: March 17, 2021

DATE OF DECISION: March 22, 2021

Decision

[1] I am allowing the appeal. This means that the Claimant should have more time to make his reconsideration request since he had a reasonable explanation for the delay in making the request and a continuing intention to do so.

Overview

[2] The Claimant applied for regular employment insurance (EI) benefits and the Commission paid him benefits starting on June 16, 2019. On March 10, 2020, the Commission decided it could not pay the Claimant benefits from October 6, 2019, because he had not proven that he was capable of working. Since the Claimant had received regular EI benefits, the Commission calculated an overpayment and sent a notice of debt to the Claimant.

[3] The Claimant asked the Commission to reconsider its decision on January 19, 2021. The Commission refused to reconsider the decision because the Claimant made the request late, after the allowable 30-day period. The Commission looked at his reasons for the delay and decided that he did not have a reasonable explanation for making his request late and did not show a continuing intention to ask the Commission to reconsider the decision.

Issue

[4] I must decide if the Claimant can have an extension of time to file his reconsideration request. To do this, I must first decide whether his reconsideration request was made late. If it was late, I will then consider whether the Commission exercised its discretion judicially when it made its decision not to extend the time to request a reconsideration.

[5] If the Commission did not properly exercise its discretion, I will make the decision the Commission should have made based on whether the Claimant had a reasonable explanation for the delay and showed a continuing intention to request a reconsideration.

Analysis

[6] You can ask the Commission to reconsider a decision up to 30 days from the date that you receive the decision.¹ If you make your request after the 30-day period, the Commission may allow more time if it is satisfied that you have a reasonable explanation for requesting more time, and you have shown a continuing intention to request reconsideration.²

[7] If you make a reconsideration request more than 365 days after the decision was communicated to you, or you made another application for benefits after you got the decision, two other conditions must be met. The Commission must be satisfied that the request for reconsideration has a reasonable chance of success, and that allowing more time would not cause prejudice to the Commission or any other person.³

The Claimant's reconsideration request was late

[8] The parties agree that the Claimant's reconsideration request was late. The Commission made its decision on March 10, 2020. The Claimant told the Commission that he received the decision in June or July 2020.⁴ He made a request for reconsideration on January 19, 2021. So his request was made late, after the 30-day deadline.

[9] The Commission gave its reasons for refusing the Claimant's request for more time.⁵ The Commission looked at whether the Claimant had a reasonable explanation for the delay, and whether he had a continuing intention to make the request.

[10] The Commission considered the Claimant's explanation that he was waiting for the outcome of an arbitration, but decided that was not a reasonable explanation for the delay. They also decided that he did not show a continuing intention to request reconsideration because he did not contact the Commission, or go into a Service Canada office to discuss the decision.

¹ Paragraph 112(1)(a) of the *Employment Insurance Act*.

² Subsection 1(1) of the *Reconsideration Request Regulations*.

³ Subsection 1(2) of the *Reconsideration Request Regulations*.

⁴ The Commission's record of its discussion with the Claimant is at GD3-17 to 18.

⁵ The Commission's record of decision is at GD3-19 to 20.

[11] The Claimant testified that he cannot read. As a result, he did not understand the Commission's March 2020, decision. He said that when he received a notice of debt in December 2020, he realized that he had to pay money back to the Commission. He said that he also has mental health challenges that made it difficult for him to reach out for help. However, he finally contacted a family member, who assisted him by reviewing the documents, explaining them to him, and helping him to draft the reconsideration request.

The Commission did not exercise its discretion properly

[12] I find that the Commission did not properly exercise its discretion when it denied the Claimant more time to request a reconsideration. My reasons are set out below.

[13] The law says the Commission may extend the 30-day deadline to request a reconsideration if it decides you had a reasonable explanation for the delay and a continuing intention to request the reconsideration.⁶

[14] The Commission's decision to extend the 30-day deadline is a discretionary decision.⁷ This means I can only change it if the Commission did not exercise its discretion judicially. Acting judicially means the Commission considered all relevant factors, did not consider irrelevant factors, acted in good faith, and did not act in a discriminatory manner.⁸

[15] If the Commission acted judicially, I cannot change its decision. If I find the Commission did not exercise its discretion judicially, I may step into its role and decide whether the Claimant meets the requirements to extend the time to request a reconsideration.

[16] I find that the Commission did not exercise its discretion judicially because it did not consider all of the relevant factors in its decision. Specifically, the Commission failed to consider the Claimant's inability to read and comprehend the March 10, 2020, decision. These factors are relevant to whether he had a reasonable explanation for the delay and a continuing intention to request a reconsideration.

⁶ These two requirements are listed in subsection 1(1) of the *Reconsideration Request Regulations*.

⁷ *Daley v Canada (Attorney General)*, 2017 FC 297.

⁸ *Canada (Attorney General) v Purcell*, A-694-94.

[17] Since I have found that the Commission did not act judicially in making its decision, I will make the decision the Commission should have made by applying the first two factors set out in the *Reconsideration Request Regulations*.⁹

Does the Claimant have a reasonable explanation for requesting a longer period?

[18] The Claimant applied for EI benefits on June 17, 2019. The Commission paid him benefits starting on June 16, 2019. On March 10, 2020, the Commission decided that it could not pay him benefits from October 6, 2019, because he did not prove that he was capable of working.

[19] The Claimant testified that he got the Commission's March 2020, decision, but he could not understand it because he is unable to read. Later, when he received a notice of debt in December 2020, he took all of the documents to a family member, and asked for their help.

[20] He said that it was not until he got the notice of debt, and spoke with his family member, that he realized that he owed money as a result of the Commission's decision. When his family member reviewed the documents and explained the situation to him, he made a request for reconsideration.

[21] The Claimant said he knew that his EI benefits had stopped. He testified that he had been in arbitration with his employer, and always intended to repay EI benefits if he was awarded any back pay. But, although he got his job back on August 24, 2020, he received no retroactive pay, and did not understand that he had to repay any of his EI benefits.

[22] He said that he tried to explain his situation to the Commission in January 2021, but did not disclose to the agent that he could not read, and so could not fully understand the first decision. He said that he also has mental health challenges, and that it is very hard for him to tell people that he is unable to read.

⁹ The Claimant does not have to meet the other two requirements set out in subsection 1(2) of the *Reconsideration Request Regulations* because his reconsideration request was made less than one year after the decision was communicated to him, and there is no evidence that he made another application for benefits after that decision.

[23] The Claimant testified in a sincere manner and I have put weight on his evidence that he is unable to read, and so he did not understand the Commission's March 2020, decision. I accept that he was only understood the decision with help from his family member in December 2020. I also accept that his inability to read was compounded by his mental health challenges.

[24] After considering the Claimant's literacy and health issues, I find that the Claimant had a reasonable explanation for his delay in requesting a reconsideration.

Did the Claimant demonstrate a continuing intention?

[25] I find that the Claimant demonstrated a continuing intention to request a reconsideration, because he submitted the request as soon as he understood the decision, with the help of his family member. It is reasonable that the Claimant formed an intention to challenge the decision only when he understood it and became aware of the process to challenge it.

Conclusion

[26] The appeal is allowed. The Claimant is entitled to an extension of time to request his reconsideration because he has a reasonable explanation for the delay and has shown a continuing intention to request a reconsideration.

Suzanne Graves

Member, General Division - Employment Insurance Section

HEARD ON:	March 17, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. S., Appellant/Claimant J. S., Representative for the Appellant/Claimant