



Citation: *SP v Canada Employment Insurance Commission*, 2021 SST 372

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

Decision

Appellant: S. P.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (424645) dated June 9, 2021
(issued by Service Canada)

Tribunal member: Solange Losier
Type of hearing: Teleconference
Hearing date: July 15, 2021
Hearing participant: Appellant
Decision date: July 15, 2021
File number: GE-21-1059

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

Overview

[2] The Claimant established a claim for employment insurance (EI) benefits on February 11, 2016 (GD3-1 to GD3-10). The year following, the Canada Employment Insurance Commission (Commission) discovered that the Claimant had received wages from his employment while he was collecting EI benefits. They decided that the Claimant had received earnings and issues a monetary penalty and violation for the misrepresentations (see decision letter dated September 17, 2017 at GD3-11 to GD3-14). The Commission says that the Claimant knew about the decision.

[3] The Claimant later submitted a “request for reconsideration” to the Commission on May 25, 2021 (GD3-15 to GD3-16). The Commission decided that the request for reconsideration was made late (past the 30-day period) and refused to allow an extension of time (GD3-21). The Claimant appealed that decision to the Social Security Tribunal (GD2-1 to GD2-10).

Matter I have to consider first

[4] This file was heard with a related Tribunal file (GE-21-1060). The Claimant agreed to have both matters heard together because they involved the same legal issue.¹ Separate written decisions have been issued because some of the facts were different.

Issues

[5] Was the initial decision communicated to the Claimant? If so, what was the date of communication?

[6] Was the reconsideration request submitted to the Commission late?

¹ Section 13 of the *Social Security Tribunal Regulations*.

[7] Did the Commission properly exercise its discretion judicially when it refused to allow the Claimant further time to make a reconsideration request?

Analysis

[8] I have to decide whether the Commission properly exercised its discretion when it refused further time for the Claimant to bring his request for reconsideration.

[9] A claimant has a 30-day period to request the Commission to reconsider a decision.² For any requests beyond 30 days, the Commission can decide if they want allow more time.³ However, the Commission has to consider certain criteria before they make their decision.⁴

[10] The Commission may allow a longer period if they are satisfied there is a reasonable explanation for requesting a longer period and the person has shown a continuing intention to request a reconsideration.⁵

[11] For delays more than 365 days, the Commission must also be satisfied the request for reconsideration has a reasonable chance of success and that no prejudice would be caused by allowing a longer period.⁶

[12] The Commission has the discretion to deny or allow further time to request a reconsideration.⁷ I can only intervene if the Commission has not properly exercised its discretion.

[13] The Commission must act in good faith, having regard to all the relevant factors, and ignore any irrelevant factors.⁸

² Subsection 112(1)(a) of the *Employment Insurance Act*.

³ *Daley v. Canada (Attorney General)*, 2017 FC 297.

⁴ Subsections 1(1) and 1(2) of the *Reconsideration Request Regulations*.

⁵ Subsection 1(1) of the *Reconsideration Request Regulations*.

⁶ Subsection 1(2) of the *Reconsideration Request Regulations*.

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

⁸ *Canada (Attorney General) v Sirois*, A-600-95.

The Commission's initial decision was communicated to the Claimant

[14] The Commission said that the decision was communicated to the Claimant in September 2017 (GD4-2).

[15] The Claimant agreed that the written decision dated on September 17, 2017 was received by mail and communicated to him by September 30, 2017 (GD3-11 to GD3-14).

[16] Accordingly, I accept that the decision was communicated to the Claimant by September 30, 2017.

The reconsideration request made by the Claimant was submitted late

[17] The parties agree that the reconsideration request made by the Claimant on May 25, 2021 was submitted past the 30-day period. It was more than 365 days from the date of communication (which was, by September 30, 2017) (GD3-15 to GD3-16).

The Commission did not properly exercise its discretion judicially

[18] I find that the Commission did not exercise their discretion in a judicial manner when they made their decision. The Commission did not consider all of the factors that they were required to consider when they made their decision.

[19] As noted above, the parties agree that the delay period was over 365 days. This means that four criteria are applicable. Specifically, these criteria include whether the Claimant had a reasonable explanation for the delay, a continuing intention to request a reconsideration, a reasonable chance of success and that no prejudice would be caused to the Commission or a party by allowing a longer period.⁹

⁹ Subsections 1(1) and 1(2) of the *Reconsideration Request Regulations*.

[20] The Commission did provide some written reasons for making their decision (see decision rationale at GD3-20). They addressed the first three factors, including whether the Claimant had a reasonable explanation for the delay, a continuing intention to request a reconsideration and a reasonable chance of success. However, they did not appear to consider the fourth applicable factor, specifically that no prejudice would be caused to the Commission or a party by allowing a longer period. I find that this is a relevant factor that the Commission did not consider when they made their decision.

[21] The Commission also discussed this decision with the Claimant on June 2, 2021 (see telephone note at GD3-18). In the Commission's telephone notes, it appears that they only considered the first two factors, whether the Claimant had a reasonable explanation for the delay and a continuing intention to request a reconsideration. However, since the delay period was more than 365 days, the third and fourth factors were also applicable. The Claimant was not provided with the opportunity to respond to the third and fourth factors. I find that this is a relevant factor that the Commission did not consider when they made their decision.

[22] The Commission's written submission only address the first three factors, but fail to address the fourth factor, that no prejudice would be caused to the Commission or a party by allowing a longer period (GD4-2 to GD4-3). I find that this is a relevant factor that the Commission did not consider when they made their decision.

[23] Since I have found that the Commission did not consider relevant factors when they made their decision, I have decided that they did not exercise their discretion in a judicial manner. I will now consider the four factors.

[24] I am satisfied that the Claimant had a reasonable explanation for the delay and a continued intention to file his request for reconsideration.¹⁰ He provided reasons for the delay which included elevated stress levels that affected his mental capacity at the time, and his overall lack of knowledge around his rights. He was busy at the time working out of town and travelling, which made it difficult to follow-up. He spoke to several agents

¹⁰ Subsection 1(1) of the *Reconsideration Request Regulations*.

from the repayment office at ESDC about his debt, but was led to believe that he could not have the Commission's decisions reconsidered.

[25] I am satisfied that the Claimant has proven that he has a reasonable chance of success because he claims that his online reports were done quickly on his smartphone. He argues that he was not aware that his reports were done incorrectly.

[26] I am satisfied that the Claimant has proven that there would be any prejudice to the Commission or any party by allowing a longer period to make the request. The Claimant said that the prejudice to him is greater because the monetary penalty has a significant impact on his finances and overall debt.

Conclusion

[27] The appeal is allowed.

[28] This means that the extension of time to make a request for reconsideration is granted. The Commission should now render a reconsideration decision on the initial decision dated September 17, 2017 (GD3-11 to GD3-14).

Solange Losier

Member, General Division – Employment Insurance Section