



Citation: *RM v Canada Employment Insurance Commission*, 2022 SST 228

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

Decision

Appellant: R. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (443744) dated December 14, 2021 (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference

Hearing date: February 8, 2022

Hearing participant: Appellant

Decision date: February 17, 2022

File number: GE-21-2581

Decision

[1] R. M. is the Claimant. The Canada Employment Insurance Commission (Commission) has refused to accept his reconsideration request. The Claimant is appealing this refusal to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. His reconsideration request was late. I find that he doesn't have a reasonable explanation for his delay in asking for a reconsideration. Also, he hasn't shown a continuing intention to ask for a reconsideration. This means that the Commission doesn't have to reconsider its original decision.

Overview

[3] The Claimant applied for Employment Insurance (EI) benefits in January 2021. The Commission looked at the circumstances and decided that he had quit his job without just cause. The Commission decided that the Claimant was disqualified from receiving EI benefits until he worked enough hours to qualify again for EI benefits. The Commission told the Claimant about its decision in a conversation on May 6, 2021 and in a letter dated May 7, 2021. The Commission also told the Claimant that he had 30 days to ask for a reconsideration.

[4] About six months later, the Claimant applied for EI benefits again. The Commission decided that it couldn't pay EI benefits because he hadn't worked enough hours to qualify for EI benefits. This is because the Commission's earlier decision about voluntary leaving meant he couldn't use any of the hours he worked before January 28, 2021 to qualify for EI benefits. So, the Claimant asked the Commission to reconsider its decision that he had quit his job without just cause. The Commission decided that the reconsideration request was too late and refused to accept the late reconsideration request.

[5] The Commission says the Claimant made his reconsideration request more than 30 days after the original decision. The Commission says the Claimant doesn't have a

reasonable explanation for his delay in asking for a reconsideration. The Commission also says the Claimant hasn't shown a continuing intention to ask for a reconsideration.

[6] The Claimant disagrees with the Commission's decision. He says he has a new ROE that shows he didn't quit his job. He says that he didn't ask for a reconsideration right away because he didn't understand the ramifications of the Commission's decision. He also says that the Commission should start counting the 30 days from the November 15, 2021 decision letter.

Issues

[7] I have to decide whether the Commission should accept the Claimant's reconsideration request. To make this decision, I have to consider several questions.

[8] First, I must decide if the Claimant's reconsideration request is late.

[9] Then, I must decide if the Commission made its decision fairly when it refused to accept the reconsideration request.

[10] If the Commission didn't make its decision fairly, then I can look at all the factors described by the law and make my own decision about whether the Commission should accept the Claimant's reconsideration request.

Analysis

[11] When the Commission makes a decision about your EI benefits, you have a 30-day deadline to ask for a review of the decision. This is called a reconsideration request.¹

[12] If you wait more than 30 days to ask for a reconsideration, you are late. The Commission has to decide whether it will accept your late reconsideration request.

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

[13] When it looks at a late reconsideration request, the Commission will ask two questions:

- Do you have a reasonable explanation for being late?
- Have you shown that you always meant to ask for a reconsideration, even though you were late?²

[14] If you make a new application for EI benefits after the Commission notifies you of its original decision, then the Commission also has to look at two extra questions:

- Does your reconsideration request have a reasonable chance of success?
- Would there be prejudice to the Commission or any other party if the Commission accepted the late reconsideration request?³

[15] The Commission can only accept the late reconsideration request and do a decision review if the answer to all four questions is “yes.” This means that you have to meet all four conditions for the Commission to accept the late reconsideration request.

[16] The Commission makes its own decisions about accepting or refusing late reconsideration requests. This is called a discretionary power.⁴

[17] Even though the Commission has discretionary power to accept or refuse a late reconsideration request, the Commission must make its decision fairly. The Commission must look at all of the information when it makes a decision. The

² Subsection 1(1) of the *Reconsideration Request Regulations*. The Commission will consider whether the claimant has a reasonable explanation for the delay and whether the claimant demonstrated a continuing intention to request a reconsideration.

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

⁴ I have decided that the Commission’s power is discretionary because under the old legislation and looking at a similar part of the law, the Federal Court of Appeal decided that the Commission’s power to refuse or accept a late request was discretionary. The Federal Court of Appeal made this decision in *Canada (Attorney General) v. Knowler*, A-445-95.

Commission should pay attention to important information about why you were late and ignore things that are not important.⁵

[18] I must respect the Commission's discretionary power. Usually, this means that I cannot change the Commission's decision. However, if the Commission did not make its decision fairly, then I can step into the Commission's role. Then, I may make the decision to accept or refuse the late reconsideration request.

Was the Claimant's reconsideration request late?

[19] I find that the Claimant's reconsideration request was late. This is because I find that the Commission communicated its decision to him no later than May 17, 2021, but he asked for the reconsideration on November 24, 2021.

[20] The Commission decided that the Claimant quit his job without just cause. The Commission says it communicated this decision to the Claimant in May 2021.

[21] The Claimant agrees that the Commission spoke to him and sent a decision letter in May 2021. But he says that the Commission sent another letter on November 15, 2021. He says that this decision letter gave him a 30-day deadline to ask for a reconsideration.

[22] The law says you have 30 days after the Commission communicates its decision to ask for a reconsideration. The law doesn't say what it means to "communicate" a decision, but there is some case law that talks about similar situations.⁶

⁵ In *Canada (Attorney General) v. Purcell*, A-694-94, the Federal Court of Appeal states that the Commission must consider all relevant factors, ignore irrelevant factors, act in good faith, and act in a manner that is not discriminatory.

⁶ I am guided by several Federal Court decisions: *Atlantic Coast Scallop Fishermen's Assn v Canada (Minister of Fisheries and Oceans)*, A-163-95, A-162-95; *Peace Hills Trust Co. V Moccasin*, 2005 FC 1364; *Cousins v Canada (Attorney General)*, 2007 FC 469; *Skycharter Ltd. V Canada (Minister of Transport)*, T-2625-96; *R&S Industries Inc v. Minister of National Revenue*, 2016 FC 320. None of these decisions are directly related to the question of the meaning of "communicated" in paragraph 112(1)(a) of the *Employment Insurance Act*. However, I find them persuasive in this case because they describe the meaning of "communicated" in the *Federal Courts Act*. The purpose of both statutes are similar; they describe the time limits affecting the right to recourse after a decision-making body makes a decision.

[23] It is the Commission's responsibility to communicate its decision to the Claimant.⁷ To communicate a decision, the Commission has to show that it told the Claimant about the "substance" and "effect" of its decision.⁸

[24] In this case, the Claimant agrees that he spoke to a Commission agent on May 6, 2021. According to the Commission's record of conversation, the Commission agent told the Claimant that she had decided that he had chosen to leave his job. She told him that she was excluding his Record of Employment (ROE) because he didn't have just cause for leaving. She also told him that he could ask for a reconsideration.

[25] The Claimant hasn't given me any reason to doubt the Commission's record of conversation. So, I find that the record of conversation is reliable.

[26] The Commission also mailed a decision letter to the Claimant on May 7, 2021. The letter says that the Commission decided that the Claimant had left his job without just cause. The letter says the Claimant is disqualified from receiving EI benefits until he works enough hours to qualify again. The letter also says he has 30 days to ask for a reconsideration.

[27] At the hearing, the Claimant agreed that he received this letter. He didn't remember when he received it. Given usual mail delivery times, I find it likely that the Claimant received the letter by May 17, 2021.

[28] I find that the evidence shows that the Commission communicated its decision to the Claimant by phone and by letter. The Commission agent explained the substance of her decision by telling the Claimant that she had decided that he left his job without just cause. The Commission agent also explained the effect of the decision. This is because she told the Claimant that she was disqualifying the ROE.

⁷ *Atlantic Coast Scallop Fishermen's Assn v Canada (Minister of Fisheries and Oceans)*, A-163-95, A-162-95.

⁸ *Cousins v Canada (Attorney General)*, 2007 FC 469.

[29] And, I find that the decision letter also explained the substance and effect of the Commission's decision. The letter repeats the Commission's decision. I also note that the letter explains that the Claimant has 30 days to ask for a reconsideration.

[30] So, I find that the Commission communicated its decision to the Claimant by May 17, 2021, at the latest. This is because the Claimant likely received the reconsideration decision letter by May 17, 2021.

[31] I understand that the Claimant says he didn't understand the ramifications of the Commission's decision. But this is more relevant to the question of whether the Claimant has a reasonable explanation for his delay. This doesn't mean that the Commission failed to communicate its decision to the Claimant.

[32] I also understand that the Claimant says he should have 30 days from the Commission's second decision letter. I disagree with the Claimant on this point.

[33] The Commission mailed a letter to the Claimant on November 15, 2021. This letter says that the Claimant doesn't have enough hours to qualify for EI benefits. The letter refers to the May 7, 2021 letter and the Commission's prior decision that the Claimant didn't have just cause for leaving.

[34] I agree that the November 15, 2021 letter includes information about the Claimant's reconsideration rights. But it is clear to me that the decision in this letter is about whether the Claimant has enough hours to qualify. So, I find that this letter gives the Claimant 30 days to ask for a reconsideration of the Commission's decision about his hours. It doesn't give the Claimant 30 days to ask for a reconsideration about whether he has just cause for leaving his job. This is because the May 7, 2021 letter already gave the Claimant notice of his reconsideration rights for that decision.

[35] So, I find that the Commission communicated its decision about voluntary leaving to the Claimant by May 17, 2021. The Claimant asked for a reconsideration of this decision on November 24, 2021. He asked for the reconsideration more than 30 days after the Commission communicated its decision to him. This means that his reconsideration request is late.

Did the Commission exercise its discretion fairly?

[36] I find that the Commission didn't exercise its discretion fairly. This is because the Commission didn't speak to the Claimant about his reconsideration request and didn't give him an opportunity to give more details about the late reconsideration request.

[37] The Claimant sent a letter with his reconsideration request. In his letter, he gives a lot of details about his job and why he disagrees with the Commission's decision that he voluntarily left his job. But he doesn't give a lot of details about why he waited to ask for a reconsideration.

[38] The Commission refused to accept the Claimant's late reconsideration request without speaking to the Claimant. So the Commission didn't try to gather more relevant information about his delay.

[39] I think this shows that the Commission didn't exercise its discretion fairly when it refused to accept the Claimant's late reconsideration request. The Claimant might have had more details about why he delayed asking for a reconsideration, but the Commission decided to refuse his reconsideration request without asking for more information.

[40] So, because the Commission didn't use its discretion fairly, I can step into the Commission's role. I can look at all of the factors in the law and make my own decision about the Claimant's late reconsideration request.

Does the Claimant have a reasonable explanation for his delay?

[41] I find that the Claimant doesn't have a reasonable explanation for his delay.

[42] At the hearing, the Claimant said he delayed asking for a reconsideration because he didn't understand the ramifications of the Commission's decision. He also said he was working and didn't need EI benefits.

[43] I don't think this is a reasonable explanation for his delay. According to the Commission's record of conversation on May 6, 2021, the Commission agent told the

Claimant that she was disqualifying his ROE. The Claimant could have asked her questions about how this decision would affect him later on, but he didn't.

[44] And, the Commission's decision letter says that the Claimant is disqualified from receiving EI benefits. The letter says he has to work enough hours to qualify again for EI. I think the letter explains the ramifications of the Commission's decision. It was open to the Claimant to contact the Commission to ask for more details about the effects of the decision.

[45] Finally, I don't think the fact that the Claimant was working and didn't need EI benefits is a reasonable explanation for his delay. Even if he was working, he still could have contacted the Commission to ask for a reconsideration. He hasn't shown me that there was anything that prevented him from asking for a reconsideration sooner.

[46] So, I find that the Claimant hasn't provided a reasonable explanation for his delay in asking for a reconsideration.

Did the Claimant show a continuing intention to ask for a reconsideration?

[47] I find that the Claimant hasn't shown a continuing intention to ask for a reconsideration during his delay.

[48] At the hearing, the Claimant said he was already working when the Commission told him about its decision. He said that he didn't think he needed to ask for a reconsideration of the decision until he actually needed to apply for EI again.

[49] So, I think this shows that the Claimant didn't intend to ask the Commission for a reconsideration during his delay. He deliberately decided to wait until he applied again for EI.

Does the Claimant's reconsideration request have a reasonable chance of success?

[50] The Commission argues that the reconsideration request doesn't have a reasonable chance of success. I disagree.

[51] For this question, I simply have to ask if there is a chance that the Commission might change its decision about voluntary leaving. Is there some evidence or argument that the Claimant could provide that might change the decision?

[52] I find that there is evidence that could change the Commission's decision. The Claimant has an amended ROE that says he stopped working because of the end of his contract. He says that he didn't actually quit his job.

[53] I think the new ROE gives the Claimant's reconsideration request a reasonable chance of success. There is a chance that this evidence could lead to a different decision about whether he quit his job.

Would there be prejudice to the Commission or another party?

[54] I find that there would be no prejudice to the Commission or any other party if the Commission were to accept the late reconsideration request.

[55] The Commission made its decision in May 2021 and the Claimant asked for a reconsideration in November 2021. This delay is less than a year, and so I think it is likely that the Commission still has evidence related to its original decision. I don't think the Commission or other parties would struggle with gathering any new arguments or evidence.

[56] I also note that the Commission agrees that there would be no prejudice if it accepted the late reconsideration request.

Should the Commission accept the Claimant's reconsideration request?

[57] The Claimant has to meet all four conditions to have the Commission accept his late reconsideration request. This means that he has to prove all of the following points:

- A reasonable explanation for his delay in asking for a reconsideration
- A continuing intention to ask for a reconsideration during the delay

- That his reconsideration request has a reasonable chance of success
- That there would be no prejudice to the Commission or other parties if the Commission accepted the late reconsideration request

[58] It is not enough for the Claimant to meet some of these conditions. If he doesn't meet every one of the conditions, then the Commission doesn't have to accept the late reconsideration request.

[59] So, even though I find that he meets some of these conditions, he hasn't proven that he meets all of them. He doesn't have a reasonable explanation for his delay and he hasn't shown a continuing intention to ask for a reconsideration. This means that the Commission doesn't have to accept his late reconsideration request.

[60] However, the law gives the Commission the discretion to look at any new facts and amend a decision. There aren't any time limits associated with this law. So, I ask that the Commission consider whether the amended ROE meets the conditions set out in section 111 of the *Employment Insurance Act*.

Conclusion

[61] I am dismissing the Claimant's appeal. His reconsideration request was late. He doesn't meet all four conditions needed for the Commission to accept the late reconsideration request.

Amanda Pezzutto
Member, General Division – Employment Insurance Section