



[TRANSLATION]

Citation: *MB v Canada Employment Insurance Commission*, 2022 SST 446

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (433608) dated
September 14, 2021 (issued by Service Canada)

Tribunal member: Manon Sauvé
Type of hearing: Videoconference
Hearing date: January 19, 2022
Hearing participant: Appellant
Decision date: January 31, 2022
File number: GE-21-2499

Decision

[1] The appeal is dismissed. The Commission exercised its discretion judicially when it denied an extension of time.

Overview

[2] The Claimant received Employment Insurance (EI) benefits in 2016 and 2017. The Commission investigated and discovered that she hadn't declared her employment income while receiving benefits.

[3] On January 30, 2019, the Commission asked her to repay the benefits she was overpaid. It imposed a penalty on her and issued a notice of violation.

[4] On September 8, 2021, the Claimant asked the Commission to reconsider. She disagrees with the interest the Commission says she owes. Her request was late for different reasons: She wasn't informed of the Commission's January 30, 2019, decision until 2020. She then consulted a lawyer and contacted the Commission. Additionally, she has moved a few times since 2017.

[5] The Commission refused to reconsider the decision made on January 30, 2019. The Claimant made her request more than a year later. She hasn't shown that she had a reasonable explanation for the delay and a continuing intention to request a reconsideration. In addition, the Commission isn't satisfied that the reconsideration request has a reasonable chance of success. However, there would be no prejudice in granting an extension of time.

[6] The Claimant, on the other hand, argues that she took steps and consulted a lawyer to find out about her rights.

Issues

1. Was the reconsideration request made late?
2. Did the Commission exercise its discretion judicially when it denied the Claimant an extension of the 30-day period to request a reconsideration?

Analysis

[7] Any person who is the subject of a decision of the Commission can make a request for a reconsideration of that decision at any time within 30 days after the day the decision is communicated to them, or any further time that the Commission may allow.¹

[8] The Commission's decision whether to allow a longer period to request a reconsideration is discretionary.² The Commission's discretion has to be exercised based on the factors in the *Reconsideration Request Regulations* (Reconsideration Regulations). The Commission may allow a claimant more time to request a reconsideration if it is satisfied that there is a reasonable explanation for requesting a longer period and the claimant has demonstrated a continuing intention to request a reconsideration.³

[9] In addition, when the request is made more than a year after the initial decision, the Commission has to be satisfied that the request for reconsideration has a reasonable chance of success and would cause no prejudice.⁴

[10] I have to decide whether, in denying an extension of time to request a reconsideration, the Commission acted in good faith, with proper purpose and motive, took into account any relevant factors, ignored any irrelevant factors, and acted in a non-discriminatory manner.⁵

[11] I can intervene only if I decide that the Commission didn't exercise its discretion judicially. If I find that its discretion wasn't exercised judicially, then I will give the decision that the Commission should have given.

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

² *Daley v Canada (Attorney General)*, 2017 FC 297.

³ Section 1(1) of the *Reconsideration Request Regulations* (Reconsideration Regulations).

⁴ Section 1(2) of the *Reconsideration Regulations*.

⁵ *Canada (Attorney General) v Sirois*, A-600-95; *Canada (Attorney General) v Purcell*, A-694-9.

Issue 1: Was the reconsideration request made late?

[12] I understand that the Commission made its initial decision on January 30, 2019. On November 13, 2020, she received a copy of the January 30, 2019, decision. She requested a reconsideration on September 8, 2021.

[13] I also note that the Claimant admits to making her request late.

[14] According to the Commission, she was 938 days late in requesting a reconsideration. The decision was made on January 30, 2019; if you add 14 days for the receipt of the letter, the Claimant received the decision on February 13, 2019. The letter wasn't returned to sender.

[15] The Claimant, meanwhile, argues that she didn't receive the decision until the fall of 2020, when she made a new claim for EI benefits.

[16] Asked about the notices of debt she started getting on February 2, 2019, and a payment in March 2020, she said that she hadn't received the decision. She wasn't exactly sure why she was being asked to repay more than \$12,000.

[17] In my view, the Claimant's reconsideration request was more than a year late. The Claimant had known about her debt since at least March 2020, and she spoke with an agent then. In addition, on June 10, 2021, she asked the recovery officer to reduce the interest accrued.

Issue 2: Did the Commission exercise its discretion judicially when it denied the Claimant an extension of the 30-day period to request a reconsideration?

[18] I find that the Commission exercised its discretion judicially when it denied the Claimant an extension of the 30-day period to request a reconsideration.

[19] I understand that the Claimant requested a reconsideration on September 8, 2021. She asked the Commission to extend the 30-day period to request a reconsideration.

[20] The Commission tried to contact the Claimant for information about her request. After leaving a few voice messages and sending an email on September 23, 2021, with no response from the Claimant, it made its decision based on the facts of the case.

[21] I asked the Claimant why she hadn't responded to the Commission's requests. She explained that there had been a mistake with her email address. After verification with the Claimant, the Commission had the right email address.

[22] Moreover, I note that the Commission addressed all four factors set out in the Reconsideration Regulations [that apply] when an extension of time is requested more than a year after the initial decision.

– **Reasonable explanation and continuing intention to pursue the reconsideration request**

[23] I note that, because she didn't respond to the Commission's phone calls or email, the Claimant didn't have the opportunity to give it her version of the facts.

[24] I understand from her testimony that she was informed of the decision in November 2020. She made a payment in March 2020 and contacted the Canada Revenue Agency on January 12, 2021, to set up a payment arrangement for the debt. She mentioned an appointment with a lawyer in late February 2021. On June 10, 2021, she sought a reduction in interest. She finally requested a reconsideration on September 8, 2021.

[25] I find that the Commission considered the relevant factors in determining whether the Claimant's explanations were reasonable and whether she had demonstrated a continuing intention to pursue her reconsideration request.

[26] The Claimant didn't provide additional evidence at the hearing. She said that she had consulted a lawyer, but after a long period. She could have contacted the Commission directly to find out about her rights.

[27] Additionally, the Claimant's explanations aren't credible concerning her failure to contact the Commission after requesting a reconsideration. The email address is the correct one, and there is no indication that the phone number is incorrect.

– **Reasonable chance of success**

[28] According to the Commission, the Claimant's case has no reasonable chance of success. She admitted to making false statements to the Commission when completing her claims for EI benefits. During her benefit period, she didn't declare her employment income. She explained that she was in a toxic relationship.

[29] As for the Claimant, she would rather be debt-free and not have to pay interest or penalties.

[30] In my view, the Claimant's reconsideration request has no reasonable chance of success. She admitted to making false statements to the Commission.

– **Prejudice**

[31] According to the Commission, there is no prejudice to the parties, since the EI benefits have already been paid.

[32] I agree with the Commission about the parties not suffering any prejudice.

[33] As a result, the Commission argues that it exercised its discretion judicially when it denied the Claimant an extension of time.

[34] After considering the evidence on file and the Claimant's testimony, I am of the view that the Commission exercised its discretion judicially. Furthermore, the additional information obtained at the hearing doesn't support a finding that the Commission ignored any factors.

Conclusion

[35] I find that the Commission exercised its discretion judicially.

[36] The appeal is dismissed.

Manon Sauvé

Member, General Division – Employment Insurance Section