



Citation: *MG v Canada Employment Insurance Commission*, 2022 SST 361

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

**Decision**

**Appellant:** M. G.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (433441) dated October 4, 2021  
(issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** Videoconference

**Hearing date:** February 22, 2022

**Hearing participant:** Appellant

**Decision date:** February 24, 2022

**File number:** GE-22-130

## Decision

[1] The appeal is dismissed. The Claimant has not met all of the factors under the law in order to get an extension to the 30-day time limit in which he can ask for a reconsideration.

## Overview

[2] The Claimant applied for Employment Insurance (EI) sickness benefits on May 20, 2016.

[3] On January 11, 2017, the Commission sent a letter to the Claimant which said they could not pay him sickness benefits as he had not given them a medical certificate.<sup>1</sup>

[4] On September 3, 2021, the Commission received a request for reconsideration of their January 11, 2017, decision.

[5] The Commission decided not to reconsider their January 11, 2017, decision as they determined the Claimant's reconsideration request was outside the 30-day time limit in which to do so and his explanation for the delay did not meet the requirements of the law in order to reconsideration a decision after the 30-day time limit had elapsed.

[6] The Claimant says he was unable to file his reconsideration request any earlier as he was experiencing financial hardship that left him without a phone or computer or access to a vehicle.

[7] The Claimant says he lives in a remote community and had no access to a Service Canada centre and it was not until September 2021, that he started to get back on his feet.

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<sup>1</sup> GD03-19

## Issues

[8] I must decide:

[9] Was the Claimant's request for reconsideration made outside the 30-day time limit in which to request a reconsideration?

[10] Did the Commission act judicially in its decision to deny the Claimant's request for an extension to the 30-day time limit to request a reconsideration?

## Analysis

### **Was the Claimant's request for reconsideration made outside the 30-day time limit in which to request a reconsideration?**

[11] I find the Claimant's request for reconsideration was made outside the 30-day time limit and was over 365 days from when the initial decision was communicated to him.

[12] The Claimant may make a request to the Commission in the prescribed form and manner for a reconsideration of a decision of the Commission that effects him, any time within 30 days after the day on which the decision was communicated to him.<sup>2</sup>

[13] The decision of the Commission the Claimant wishes to have reconsidered was sent to him in the form of a letter on January 11, 2017.<sup>3</sup>

[14] The Claimant agrees that he got the January 11, 2017, letter. I also note he included a copy of it with his reconsideration request and said in his reconsideration request he got the decision letter dated January 11, 2017,<sup>4</sup> all of which further support he got the January 11, 2017, letter.

[15] I find allowing ten days for mailing is reasonable, so the Claimant would have received the January 11, 2017, letter on January 21, 2017, at the latest. I find, that as

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<sup>2</sup> Subsection 112(1) of the *Employment Insurance Act*

<sup>3</sup> GD03-12

<sup>4</sup> GD03-21

the January 11, 2017, letter outlined the decision of the Commission, the Claimant's right to appeal and the timeline in which to do so, the decision of the Commission was communicated to the Claimant on January 21, 2017, at the latest.

[16] I find, that as the Claimant's request for reconsideration was received on September 3, 2021,<sup>5</sup> his request was filed outside the 30-day time limit set out in the legislation in which to request a reconsideration, and was over 365 days from when the initial decision was communicated to him.

**Did the Commission act judicially in its decision to deny the Claimant's request for an extension to the 30-day time limit to request a reconsideration?**

[17] I find the Commission did not act judicially when they made their decision as they ignored relevant factors.

[18] The decision of the Commission on whether to grant additional time for the Claimant to request a reconsideration of a decision is discretionary.<sup>6</sup> I cannot intervene in a discretionary decision unless it was not made judicially.

[19] For a discretionary decision to have been made "judicially" the decision maker cannot have acted in bad faith or for an improper purpose or motive, took into account an irrelevant factor or ignored a relevant factor, or acted in a discriminatory manner. Any discretionary decision that is not made "judicially" should be set aside.<sup>7</sup>

[20] I find I agree with the submission of the Claimant in his testimony that the Commission did not act judicially when they made their decision as they failed to consider relevant factors. Those factors being the Claimant's situation he was facing financial difficulties and was living in a small remote town, which he argues made it not possible to request a reconsideration at an earlier date.

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<sup>5</sup> GD03-21

<sup>6</sup> *Daley v Canada (Attorney General)*, 2017 FC 297

<sup>7</sup> *Canada (Attorney General) v Purcell*, 1 FCR 644

[21] The Commission argues that the Claimant never raised these issues when he spoke with them initially, only raising them in his notice of appeal and thus they should be considered suspect.<sup>8</sup>

[22] While I understand the Commission's position, as after being denied a reconsideration suddenly new issues are raised by the Claimant that were never brought up before, but I find the Claimant's financial struggles and where he lived and how that may have impacted his ability to actually file a reconsideration are relevant factors and they were not looked at when the Commission made their decision.

[23] Since the Commission did not make their decision judicially, as they failed to take into account relevant factors, I will give the decision the Commission should have given, pursuant to subsection 54(1) of the *Department of Employment and Social Development Act*.

[24] There are four factors I need to consider since I have found the Claimant's request for reconsideration was made 365 days after the initial decision was communicated to him.<sup>9</sup> Those factors are:

- Is there a reasonable explanation for the Claimant requesting more time in which to ask for a reconsideration?
- Has he demonstrated a continuing intention to request a reconsideration?
- Does he have a reasonable chance of success with his request for reconsideration?
- Would any prejudice be caused to any party or the Commission if I allow the extra time in which the Claimant could make a reconsideration?

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<sup>8</sup> GD04-3

<sup>9</sup> Pursuant to subsections 1(1) and 1(2) of the *Reconsideration Request Regulations*

**Reasonable explanation for the delay**

[25] I find the Claimant has not shown a reasonable explanation for the delay.

[26] The Commission says that it is not reasonable to conclude the Claimant was unable find a way to attend a local office in person, or contact them by telephone, in the last five years.

[27] The Commission submits the fact that the Claimant said he did attempt to attend the local office and was able to submit an application for benefits in January 2019, negates any argument that he was prevented physically or mentally from making contact with them.

[28] The Claimant says that although he got the January 11, 2017, letter he did not ask for a reconsideration at the time as a reconsideration request had to be done in-person and that was not something easily done in his case.

[29] The Claimant says that he worked and lived in a remote area.

[30] The Claimant says this remote area was connected to the town in which the Service Canada Centre was at by a highway that was undergoing major construction, construction which is still ongoing today.

[31] The Claimant says this resulted in the highway being closed most of the time and so if you wanted to make it to the Service Canada Centre you would have to leave at the proper time when the highway was open.

[32] The Claimant says that the only time he was in town was over the weekend, so he would not miss work, and if he wanted to go into the Service Canada Center that would have to have been done on Monday morning, but they were not open then.

[33] On top of that, his doctor was in another town two hours away so, if he wanted to appeal the denial due to not having a doctor's note, he would have had to take a day off work, leave at the right time to go when the highway was open, try and make it to his doctor and get the note and then get back on time to get to the Service Canada Centre when it was open.

[34] The Claimant says the Commission does not understand what it is like to be in a remote area. The Service Canada Centre is only open on certain days of the week and only at certain times, it is not like in the big city.

[35] The Claimant submits that it was also not a minor deal to take a day off work as he was in dire financial straits as his debt to the Commission was coming off his paycheque so he was working for almost nothing. That combined with his other financial issues meant he could not afford to take time off work to deal with this issue.

[36] The Claimant says he also did not, and still to this day does not, have a computer so he could not have done anything online. So there is no way he could have completed a reconsideration request without going in-person.

[37] The Claimant says the Commission stating he paid the debt and did not dispute it is not correct; he did not pay the debt, it was taken off his paycheque, so there was nothing he could do about it; payment of the debt was not voluntary.

[38] The Claimant disputes filing another application for benefits in January 2019 as the Commission says he did, but he says that even if he did you can file an application over the phone, which is not something you can do with a reconsideration request.

[39] The Claimant says in September 2021, when he filed his request for reconsideration he had moved into town and had a new job that allowed him to work two weeks on, one week off, so he could then make it into a Service Canada Centre.

[40] I find the Claimant has not provided a reasonable explanation for the delay.

[41] I accept that the Claimant had no computer, was in dire financial straits, was stuck traveling along a highway that was only open at certain times due to road closures, and was faced with a Service Canada Centre that was only open on certain days and certain times.

[42] However, despite all that, the Claimant still has not provided a reasonable explanation.

[43] I note that while the Claimant said a reconsideration request had to be done in-person this is incorrect.

[44] The January 11, 2017, letter, which the Claimant says he received, clearly lays out, in more than one place, that you can call to dispute the overpayment and for help on making a reconsideration decision. So, the Claimant could have called the Commission to dispute the decision.

[45] If the Claimant had called, perhaps the Commission could have mailed the reconsideration forms out to him once he explained his situation, but this is something he did not do.

[46] I know the Claimant said he was having trouble paying his phone bill and keeping service, but, he has not argued that he never had a phone at all until September 2021, so that means he could have called the Commission prior to that date.

[47] Barring that, since he could have phoned, he could have always asked to borrow a phone from a friend to make the call to the Commission.

[48] Further, as awful as it would have been to lose a day's pay by taking a day off, if the repayment of the debt from the January 11, 2017, decision was causing increased financial hardship to the Claimant, and he was determined to do a reconsideration request in-person, he could have taken a day off to go in to a Service Canada Centre and get the process started.

### **Continuing intention to request a reconsideration**

[49] I find the Claimant did not have a continuing intention to request a reconsideration.

[50] The Commission submits the Claimant was aware of their decision dated January 11, 2017 and he delayed until September 3, 2021, to make a request for reconsideration and there was no indication of any efforts to resolve the issue sooner than September 2021.

[51] I find I agree with the submission of the Commission.



[52] The Claimant says he felt defeated after he got the January 11, 2017, decision from the Commission as he felt like David going up against Goliath. He said that such feelings kind of make you give up.

[53] In fact, the Claimant told the Commission he requested a reconsideration in September 2021, because his partner asked him to do so. I find this fact, along with his statements he felt defeated and gave up, shows that he did not have a continuing intention to request a reconsideration as he never took any action prior to September 2021, to contest the January 11, 2017, decision.

### **Reasonable Chance of Success**

[54] I find the Claimant does have a reasonable chance of success as the underlying issue, which I am not making a decision on here, is that the Claimant was denied sickness benefits as he failed to provide a medical certificate, but he has provided one with his notice of appeal, thus possibly satisfying the requirement.

[55] The Commission also submits the Claimant has a reasonable chance of success.<sup>10</sup>

### **Prejudice against another party**

[56] I find there would not be prejudice to any party in allowing an extension to the time in which the Claimant can request a reconsideration.

[57] The Commission submits that there would be prejudice to them, but they do not expand on how it would be prejudicial.<sup>11</sup>

[58] I find it would not be prejudicial as the issue is the failure of the Claimant to provide a medical certificate and he has provided one now. It would not be prejudicial against the Commission to look at the certificate he has included and see if it meets the requirements under the law.

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<sup>10</sup> GD04-3

<sup>11</sup> GD04-3

[59] While it has been a very long time, almost five years, since they made their original decision the Commission does not need to go back and investigate information from parties. All they are looking at is the medical certificate which was provided by the Claimant.

### **Summary**

[60] While the Claimant has met two of the four factors required in order to be granted an extension to the time in which to file a request for reconsideration that is not enough. He must meet all four factors in order to be granted additional time.

[61] Since he has not met all four factors, I find he cannot be granted additional time in which to file his request for reconsideration. This means his request for reconsideration is late, and will not be looked at by the Commission.

### **Conclusion**

[62] The appeal is dismissed. I find the Claimant's request for reconsideration was made outside the 30-day time limit in which to request a reconsideration and was over 365 days from when he was informed of the decision.

[63] I further find the Commission did not make their decision to deny the Claimant extra time in which to file his reconsideration request judicially, as they failed to consider a relevant factor.

[64] In giving the decision the Commission should have given I find the Claimant does not meet the four factors set out in the law and therefore he will not be granted extra time in which to file his reconsideration request.

Gary Conrad  
Member, General Division – Employment Insurance Section