



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MK v Canada Employment Insurance Commission*, 2022 SST 675

Tribunal File Number: GE-22-1354

BETWEEN:

M. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

DATE OF DECISION: June 15, 2022

Decision

[1] The Claimant's appeal to the Social Security Tribunal (Tribunal) can't proceed. This is because they submitted their appeal to the Tribunal too late, more than one year after the Commission communicated the reconsideration decision to them.

Overview

[2] When the Claimant lost their job, they applied for regular Employment Insurance (EI) benefits. On August 15, 2008, the Commission notified the Claimant they were disqualified from receiving regular EI benefits due to their misconduct.¹

[3] A few months later, the Claimant requested sickness EI benefits. They received payment for the maximum 15 weeks of sickness EI benefits from December 7, 2008, to March 21, 2009.

[4] The Commission states the following year, on March 25, 2010, the Claimant submitted an appeal to the Board of Referees. They appealed the Commission's August 15, 2008, decision disqualifying them from regular EI benefits.

[5] On April 28, 2010, the Commission documented that it refused to accept the Claimant's appeal to the Board of Referees because they submitted it late. The Commission sent the Claimant a letter explaining they had 30 days to file an appeal in writing.²

[6] Almost twelve years later, on March 8, 2022, the Commission received a second reconsideration request from the Claimant. The Claimant states they are requesting reconsideration of the August 15, 2008, decision disqualifying them from receiving regular EI benefits.³

¹ See page GD3-15.

² See page GD3-19.

³ See page GD3-21.

[7] The Commission refused to proceed with the second reconsideration request. This is because it had previously issued an Administrative Review Decision on this issue almost twelve years earlier, on April 28, 2010.

[8] The Claimant filed an appeal to the Tribunal using an Application to Appeal to the Appeal Division of the Social Security Tribunal (Tribunal). This application is before the EI General Division, as that is the first level of appeal before the Tribunal.

[9] In their appeal to the Tribunal, the Claimant states they can't recall when they received the Commission's April 28, 2010, decision refusing their appeal to the Board of Referees. The Claimant wishes to dispute the Commission's August 15, 2008, initial decision denying them regular EI benefits.

Matter I must determine first

Date of the reconsideration decision under appeal

[10] I agree with the Commission that the decision under appeal is its April 28, 2010, decision. This decision states the Commission refused to accept the Claimant's appeal to the Board of Referees because it was late.⁴

[11] I recognize the Claimant recently submitted a second request for reconsideration regarding the same issue. The Commission wrote to the Claimant on March 29, 2022, stating their reconsideration request could not proceed because it had already issued an Administrative Review Decision for the same issue, on April 28, 2010.

[12] The Commission's March 29, 2022, letter is not a reconsideration decision. It informs the Claimant that the Commission had already issued an Administrative Review Decision on the same issue. This means the issue under appeal is the Commission's April 28, 2010, decision, refusing to accept the Claimant's appeal to the Board of Referees.

⁴ See page GD3-19.

Jurisdiction

[13] Effective April 1, 2013, all issues relating to Employment Insurance appeals, previously submitted to the Board of Referees, were deemed to be the jurisdiction of the Social Security Tribunal.⁵

[14] In this case, the issue under appeal is dated April 28, 2010, so it is deemed to be under the Tribunal's jurisdiction. I will now determine whether the Claimant's appeal to the Tribunal is too late to proceed.

Issue

[15] Can the Claimant's appeal proceed?

Analysis

[16] When you appeal a reconsideration decision made by the Commission, the general rule is that you must submit the appeal to the Tribunal within 30 days.⁶ The thirty-day period starts from the date the Commission communicated their reconsideration decision to the Claimant.

[17] There are no circumstances where an appeal can proceed when the appeal is submitted to the General Division of the Tribunal more than one year (12 months) after the day the Commission communicates the reconsideration decision to the Claimant.⁷

When did the Commission communicate the reconsideration decision?

[18] The Commission's reconsideration decision is deemed to be communicated to the Claimant on May 8, 2010. Here is what I considered.

[19] When determining when the decision was communicated, I am persuaded by recent decisions from the Tribunal's Appeal Division.⁸ In those decisions, the Appeal

⁵ See section 269 of the *Department of Employment and Social Development Act* (DESD Act).

⁶ See section 52(1)(a) of the DESD Act.

⁷ See section 52(2) of the DESD Act.

⁸ See for example *JL v Canada Employment Insurance Commission*, 2021 SST 256 and *DM v Canada Employment Insurance Commission*, 2021 SST 565.

Division accepted that written communication of the reconsideration decision is required to start the 30-day clock.

[20] I recognize that the Commission issued a written decision on April 28, 2010. This letter told the Claimant they have **30 days following the receipt of this notice to file an appeal in writing.**⁹

[21] The *Social Security Tribunal Regulations* says that a decision made under section 53(1) of the *Employment Insurance Act* (EI Act) is deemed to have been communicated to a party 10 days after the day on which it is mailed to the party.¹⁰

[22] I recognize the Commission documented it sent the decision letter to the Claimant on April 28, 2010.¹¹ The Claimant doesn't dispute receiving this letter. Instead, they state they don't remember when they received the letter.¹² So, I find the Claimant is deemed to have received the Commission's decision letter on May 8, 2010.¹³

[23] I give more weight to the Commission's reconsideration documents over the Claimant's statements in their appeal.¹⁴ The Commission's documents are more reliable than the Claimant's recollection of what may have occurred almost twelve years ago. This is because the Commission created the documents on the days it spoke with the Claimant and rendered the decisions in 2008 and 2010.

[24] Based on the above, I find the Commission's reconsideration decision is deemed to be communicated to the Claimant on May 8, 2010.

Did the Claimant submit their appeal late?

[25] Yes, I find the Claimant submitted their appeal to the General Division of the Tribunal more than one year after the Commission communicated the reconsideration

⁹ See page GD3-19.

¹⁰ See section 19(1) of the *Social Security Tribunal Regulations*. Section 53 of the EI Act says that if the Commission is required to notify a person of a decision under this Part, it may have that person notified in such manner as it considers adequate.

¹¹ See page GD3-18.

¹² See page GD2-11.

¹³ See section 19(1) of the *Social Security Tribunal Regulations*.

¹⁴ See the GD3 documents.

decision to them. The Claimant submitted their notice of appeal to the Tribunal on March 12, 2022.¹⁵ This is almost twelve years after the date of when the Commission communicated the reconsideration decision to the Claimant.

[26] As stated above, there are no circumstances where an appeal can proceed when an appeal is submitted to the General Division of the Tribunal more than one year (12 months) after the day the Commission communicates the reconsideration decision to the Claimant.¹⁶ This means the appeal can't proceed.

[27] I have great sympathy for the financial struggles the Claimant states they are having. I also sympathize with their medical struggles and the stress their family is going through. But I must apply subsection 52(2) of the DESD Act which clearly states that in no case may an appeal be brought more than one year after the reconsideration decision was communicated to the Claimant.

Conclusion

[28] The appeal to the General Division of the Tribunal was not submitted in time. This means it will not proceed.

Linda Bell
Member, General Division - Employment Insurance Section

¹⁵ See the GD2 documents.

¹⁶ See section 52(2) of the DESD Act.