



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SL v Canada Employment Insurance Commission*, 2022 SST 775

Tribunal File Number: GE-22-1324

BETWEEN:

S. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

DATE OF DECISION: June 13, 2022

REASONS AND DECISION

DECISION

[1] S. L. is the Claimant. She is appealing a decision of the Canada Employment Insurance Commission (Commission) to the Social Security Tribunal (Tribunal). But her appeal is late.

[2] I can't accept her late appeal. This is because she filed her appeal more than a year after the Commission notified her of its reconsideration decision. The law doesn't allow me to accept any appeal if it is more than one year late.

OVERVIEW

[3] The Claimant collected Employment Insurance (EI) sickness benefits in 2016. The Commission paid benefits first. But then, a few months later, the Commission asked her for a doctor's note. The Claimant didn't provide a doctor's note, and the Commission couldn't contact her. So, the Commission decided that she hadn't proven that she was entitled to EI sickness benefits. The Commission asked her to repay benefits.

[4] Usually, you are supposed to ask for a reconsideration within 30 days. The Claimant didn't do this. Instead, she contacted the Commission in November 2019 to ask for a reconsideration. The Commission refused to reconsider its decision. The Commission said the Claimant made her request too late and it didn't think she had a reasonable explanation for her delay. The Commission notified her of its decision and mailed a decision letter in November 2019.

[5] The Claimant had 30 days to file an appeal of this decision to the Tribunal. She didn't file her appeal within 30 days. The Tribunal received her appeal on April 8, 2022.

ISSUE

[6] I must decide if I can give the Claimant an extension of time to file an appeal with the Tribunal. To make this decision, first, I must decide when the Commission notified

her of its reconsideration decision.¹ Then, I must decide if I can give her an extension of time to file an appeal.

ANALYSIS

[7] The law says you must file an appeal with the Tribunal within 30 days after the Commission notifies you of a reconsideration decision.² In some cases, you can ask the Tribunal for an extension of time to file an appeal.³ In other words, if you file an appeal after 30 days, sometimes the Tribunal can accept a late appeal.

[8] But the Tribunal can never accept an appeal if you file it more than one year after the Commission notifies you of its reconsideration decision.⁴ Nothing in the law lets me accept an appeal that is more than one year late.

[9] So, to make this decision, first I must decide when the Commission communicated its reconsideration decision to the Claimant.

[10] The Claimant asked the Commission for a reconsideration on November 7, 2019. The Commission decided to refuse the Claimant's reconsideration request because it was late. A Commission officer spoke to the Claimant on November 19, 2019. The Commission told her it was refusing her request and told her she could file an appeal with the Tribunal. The Commission also mailed a letter with this decision on the same day. The Commission mailed this letter to the Claimant at the same address she listed on her reconsideration request.

[11] Less than two weeks later, on November 27, 2019, the Claimant submitted another reconsideration request. The Claimant listed the same address on this reconsideration request form. A Commission officer spoke to her on December 4, 2019. The officer told her that the Commission had already refused her reconsideration request.

¹ Section 52 of the *Department of Employment and Social Development Act* refers to the Commission "communicating" its decision. I am paraphrasing in plain language.

² Subsection 52(1) of the *Department of Employment and Social Development Act*.

³ Subsection 52(2) of the *Department of Employment and Social Development Act* permits the Tribunal to grant an extension of time to appeal.

⁴ Subsection 52(2) of the *Department of Employment and Social Development Act*.

The officer told her again to file an appeal with the Tribunal. The Commission mailed another letter to the Claimant with this information on the same day. The Commission mailed this letter to the same address that it sent the prior letter.

[12] On March 25, 2022, the Claimant contacted the Commission again. She said she thought she received the original reconsideration decision letter, but probably destroyed it or lost it. She asked for a new copy of the letter. When the Claimant appealed to the Tribunal, she said she received the Commission's reconsideration decision letter on April 8, 2022.

[13] I think it is unlikely that the Commission communicated its reconsideration decision letter to the Claimant on April 8, 2022. Instead, I think it is more likely that the Commission communicated its decision to the Claimant sometime in November 2019. I think it is likely that she first received the reconsideration decision letter in November or December 2019.

[14] These are the important factors that make me think the Commission notified the Claimant of its decision in November or December 2019:

- Commission officers spoke to the Claimant in November and December 2019. Both times, the officers told the Claimant that the Commission was refusing her reconsideration request.
- The Commission mailed two letters – one in November 2019 and the second in December 2019 – to the Claimant about its reconsideration decision. Both letters went to the same address the Claimant included on the two reconsideration request forms.
- The Claimant told the Commission that she probably received the reconsideration decision letters, but lost or destroyed them.

[15] All of these circumstances make me think the Commission communicated its reconsideration decision to the Claimant in November 2019, and that she received the reconsideration decision letter by December 2019. The Claimant hasn't given me any

information that makes me think the Commission hadn't notified her of its reconsideration decision by December 2019.

[16] The Claimant filed her appeal with the Tribunal on April 8, 2022. This is more than one year after the Commission communicated its decision to her. The law doesn't allow me to accept an appeal that is more than one year late. This means that I can't accept the Claimant's late appeal.

[17] I understand that the Claimant has explained her delay. She says that she had trauma and moved several times. But I can't look at the reasons for her delay. The law doesn't let me accept an appeal that is more than one year late, even if there are very good reasons for a delay.

CONCLUSION

[18] I can't accept the Claimant's late appeal. This is because it is more than one year late. This means the Claimant's appeal will not move on to next steps in the appeal process.

Amanda Pezzutto
Member, General Division - Employment Insurance Section