



[TRANSLATION]

Citation: *KL v Canada Employment Insurance Commission*, 2022 SST 1087

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

Decision

Appellant: K. L.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (477878) dated May 10, 2022
(issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: September 8, 2022
Hearing participant: Appellant
Decision date: October 7, 2022
File number: GE-22-1812

Decision

[1] The appeal is dismissed. I find that the Canada Employment Insurance Commission (Commission) was justified in refusing to extend the 30-day period to request a reconsideration.¹

Overview

[2] On April 25, 2022, the Appellant asked the Commission to reconsider two decisions dated February 25, 2020.²

[3] On May 10, 2022, the Commission told her that it would not reconsider the February 25, 2020, decisions. It told her that it had looked at her reasons for her late reconsideration request, but it had found that they didn't meet the requirements of the *Reconsideration Request Regulations*.³

[4] The Commission's February 25, 2020, decisions deal with the following: the reconsideration of the Appellant's claim for benefits given her alleged false or misleading statements about the earnings from an employer she had worked for, her voluntarily leaving that place without reporting it, and a notice of debt that was going to be sent to her.⁴

[5] The Appellant explains that she asked the Commission to reconsider its February 25, 2020, decisions after the deadline because she didn't receive the decisions until late March 2022, when she went to a Service Canada Centre. She says that she had first received a notice of debt in March 2022. She indicates that, on February 25, 2020, she no longer lived at the address in the Commission's decisions. She says that the person who still lived there—her ex-partner—told her that he hadn't received the decisions. She says that she didn't get the notice of debt that was sent to that address in March 2020 either, or the monthly statements of account that were sent

¹ See section 112 of the *Employment Insurance Act* (Act) and section 1 of the *Reconsideration Request Regulations*.

² See GD3-11 to GD3-15 and GD3-32 to GD3-35.

³ See GD2-10 and GD3-40.

⁴ See GD3-11 to GD3-16.

there during the period from November 2020 to May 2021. She says that her ex-partner told her that he hadn't received those documents either. She indicates that, in June 2021, she was sent a statement of account at the mailing address she had given to the Canada Revenue Agency (CRA) a month earlier—her father's address. She explains that, when mail turned up for her at either address, she could go and get it, since her ex-partner or father would tell her when she had mail. She argues that, when the CRA contacted her in October 2021, she was told that she had until April 30, 2022, to contact its collections centre. She says that, because of this, she thought she had until the end of April 2022 to request a reconsideration. On May 20, 2022, the Appellant challenged the Commission's May 10, 2022, decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issue

[6] I have to decide whether the Commission was justified in refusing to extend the 30-day period to request a reconsideration.⁵

Analysis

[7] A claimant or other person who is the subject of a decision of the Commission can ask the Commission, in the prescribed form and manner, to reconsider that decision at any time within 30 days after the day on which the decision is communicated to them, or any further time that the Commission may allow.⁶

[8] The Commission can allow a longer period for a reconsideration request if it is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.⁷

[9] The Commission must also be satisfied that the reconsideration request has a reasonable chance of success, and that no prejudice would be caused to the Commission or a party by allowing a longer period to make the request, in the following

⁵ See section 112 of the Act and section 1 of the *Reconsideration Request Regulations*.

⁶ See section 112(1) of the Act.

⁷ See section 1 of the *Reconsideration Request Regulations*.

“particular circumstances”: the reconsideration request (a) is made after the 365-day period after the day on which the decision was communicated to the person; (b) is made by a person who submitted another application for benefits after the decision was communicated to the person; or (c) is made by a person who has requested the Commission to rescind or amend the decision under section 111 of the *Employment Insurance Act*.⁸

[10] I note that, given the issue raised in this case, my role is limited to determining whether the Commission exercised its discretion judicially when it denied the Appellant an extension of the 30-day period to request a reconsideration.⁹

[11] The Federal Court of Appeal (Court) has established the principle that discretionary decisions of the Commission should not be interfered with unless the Commission didn’t exercise its discretion judicially.¹⁰

[12] The Court has also defined “judicially” as acting in good faith, taking into account all relevant factors and ignoring any irrelevant factors.¹¹

[13] The Federal Court has confirmed that the Commission’s decision whether to extend the time to request a reconsideration is discretionary.¹²

[14] In this case, I find that the Commission has shown that it exercised its discretion judicially when it denied the Appellant an extension of the 30-day period to request a reconsideration.

[15] The Commission argues as follows:

- a) The Commission explains that, in deciding whether to allow the Appellant a longer period to request a reconsideration, it considers the following requirements of the *Reconsideration Request Regulations*: It has to be

⁸ See section 1(2) of the *Reconsideration Request Regulations*.

⁹ See section 112 of the Act and section 1 of the *Reconsideration Request Regulations*.

¹⁰ The Federal Court of Appeal (Court) established or reiterated this principle in the following decisions: *Sirois*, A-600-95; and *Chartier*, A-42-90.

¹¹ See the following Court decisions: *Sirois*, A-600-95; and *Chartier*, A-42-90.

¹² See the Federal Court decision in *Daley*, 2017 FC 297.

satisfied that there is a reasonable explanation for requesting a longer period and find that the person (the Appellant) has demonstrated a continuing intention to request a reconsideration.¹³

- b) Decisions were made in the Appellant's case on February 25, 2020. Notices of decision were sent to her that same day. She was also sent a notice of debt, on March 21, 2020.¹⁴
- c) The Commission found that the reconsideration request was late, having received it more than 30 days after telling the Appellant about the decisions affecting her.¹⁵
- d) The Commission says that, since the reconsideration request was filed more than 365 days after the notices of decision were sent to the Appellant on February 25, 2020, it also has to be satisfied that the reconsideration request has a reasonable chance of success and that no prejudice would be caused to the Commission or another party by allowing a longer period to make the request.¹⁶
- e) In refusing to reconsider the decisions affecting the Appellant, la Commission considered that the decisions, notice of debt, and statements of account were sent to addresses that were still home to the Appellant's father and ex-partner, that these people gave her any mail addressed to her, and that there was no undeliverable mail on file. In the Commission's view, it is more likely than not that the Appellant received these documents. It considered that she was told about the decisions that were sent to her on February 25, 2020, and that, because of this, her reconsideration request was received 760 days after she was told about the decisions in question.¹⁷

¹³ See section 1(1) of the *Reconsideration Request Regulations*—GD4-3.

¹⁴ See GD3-11 to GD3-16 and GD4-3.

¹⁵ See GD4-4.

¹⁶ See section 1(2) of the *Reconsideration Request Regulations*. See also GD4-3 and GD4-4.

¹⁷ See GD4-4.

- f) The Appellant doesn't have a reasonable explanation for why she waited until April 25, 2022, to request a reconsideration; her move didn't stop her from receiving her mail, given that her father and ex-partner gave it to her and that there is no undeliverable mail on file.¹⁸
- g) The Appellant also hasn't shown that she had a continuing intention to request a reconsideration of the decisions affecting her, since she took no steps to that end until March 2022.¹⁹
- h) The information on file differs from that given by the Appellant and shows that she was made aware of the decisions about her Employment Insurance (EI) benefits well before March 2022.²⁰
- i) The facts in the record show that the Appellant's two telephone conversations with CRA representatives happened earlier than she says. According to the CRA's file, the Appellant was contacted twice: on May 19, 2021, and on October 26, 2021. There is no indication that there were other telephone conversations with the Appellant.²¹
- j) On May 19, 2021, a representative from the CRA's collections centre contacted the Appellant about paying back a benefit overpayment following the Commission's decisions. The Appellant was told that she had two months to contact the collections centre. She was also told to get in touch with Service Canada. She was given Service Canada's phone number after saying she didn't know about the benefit overpayment she owed. The address on file for her was changed. Monthly statements of account were sent to the new address beginning on June 16, 2021. These documents indicate that an EI decision caused the overpayment.²²

¹⁸ See GD4-4 and GD4-6.

¹⁹ See GD4-4 and GD4-6.

²⁰ See GD4-4.

²¹ See GD4-5.

²² See GD3-23 to GD3-25 and GD4-5.

- k) This means that, on May 19, 2021, the Appellant had to have known that decisions had been made in her case and that she had to get in touch with Service Canada, having been verbally instructed to do so. She also got this instruction in writing when she was sent a statement of account. She could not have received the first notice of debt in March 2022, since the statements of account were sent to her at her reported home address beginning on June 16, 2021.²³
- l) When the CRA contacted her again on October 26, 2021, the Appellant hadn't gotten in touch with Service Canada yet. The CRA gave her Service Canada's phone number again after she said she hadn't heard [from] them. Her financial situation prevented her from setting up a repayment arrangement for the money she owed. The CRA asked her to contact it by April 2022. These facts show that the Appellant had a second conversation with the CRA on October 26, 2021, not in March 2022.²⁴
- m) Although the Appellant alleges that she called Service Canada twice but that nobody would explain the overpayment to her, she hasn't said when she made those calls. There are no file notes indicating that she contacted the Commission. Normally, a claimant who contacts the Service Canada call centre is informed of the status of their file, the decisions in their case, their right to request a reconsideration, and the procedure. The Commission notes that it is hard to believe that call centre employees refused to give the Appellant information about her file.²⁵
- n) Even though the Appellant argues that she filed her reconsideration request on time because, in October 2021, the CRA's collections centre gave her until April 30, 2022, to request a reconsideration, that deadline was for setting up a payment arrangement, not for requesting a reconsideration. The 30-day period to ask the Commission to reconsider a decision is set out in the

²³ See GD4-5.

²⁴ See GD3-30, GD3-31, and GD4-5.

²⁵ See GD4-5.

Employment Insurance Act. Under the *Reconsideration Request Regulations*, the authority to allow a longer period lies with the Commission, not with a CRA representative.²⁶

- o) Since the Appellant hadn't given a reasonable explanation for her delay in requesting a reconsideration or shown that she had a continuing intention to request a reconsideration, the Commission didn't consider whether the reconsideration request had a reasonable chance of success or whether prejudice could be caused to the Commission or another party by allowing a longer period.²⁷
- p) Concerning one of the issues it decided on February 25, 2020, namely voluntary leaving, the Commission says that the reconsideration request would have a reasonable chance of success. It notes that, on this issue, no prejudice would be caused to the Commission or another party by allowing a longer period. It says that it was still appropriate to refuse the Appellant's late reconsideration request, since the four conditions set out in the *Reconsideration Request Regulations* weren't met.²⁸
- q) The Commission says that it exercised its discretion "judicially"²⁹ when it refused to extend the 30-day period to request a reconsideration of the decisions affecting the Appellant, since it gave her the opportunity to provide information on her delay. It says that it considered the relevant information in making its decision.³⁰

[16] The Appellant's testimony and statements indicate the following:

- a) The Appellant explains that she received the Commission's February 25, 2020, decisions in late March 2022, after going to a Service Canada Centre.

²⁶ See GD4-5 and GD4-6.

²⁷ See GD4-4.

²⁸ See GD4-6.

²⁹ See section 112 of the Act.

³⁰ See GD4-6 and GD4-7.

She had first received a notice of debt in March 2022. When she went to a Service Canada Centre, she was given copies of the Commission's February 25, 2020, decisions. The Commission (Service Canada) never tried to call her. So, she didn't know about the Commission's February 25, 2020, decisions or about the money she owed it before she visited a Service Canada Centre in late March 2022.³¹

- b) On February 25, 2020, she no longer lived at the address in the decisions the Commission had sent her. When those decisions were sent to her, her ex-partner still lived at that address. She was living with her father. Her ex-partner told her that he hadn't received the decisions in question.³²
- c) The Appellant didn't get the notice of debt that was sent to her in March 2020 either,³³ or the monthly statements of account that were sent to her during the period from November 2020 to May 2021.³⁴ Those documents were also sent to the same address as the February 25, 2020, decisions. Given that the CRA had told her that statements of account had been sent to her each month during the period from November 2020 to May 2021, she asked her ex-partner, more than once, whether he had received these documents. He confirmed that he hadn't received such documents. The Appellant says she is positive that her ex-partner would have given them to her if he had received them.³⁵
- d) The Appellant explains that the CRA did, in fact, contact her in May 2021 (May 19, 2021, call), not in January 2022 as she initially told the Commission, saying she thought it was a scam. It was during that call that she found out she owed money.³⁶

³¹ See GD2-5, GD3-32, and GD3-36.

³² See GD3-36 and GD3-37.

³³ See GD3-16.

³⁴ See GD3-17 to GD3-22.

³⁵ See GD3-37.

³⁶ See GD2-5 and GD3-36.

- e) On May 19, 2021, during her conversation with a CRA representative, the Appellant gave her father's address as her mailing address, but she wasn't living there at the time. She gave that address to make sure she would get her mail, given that she moved a lot.
- f) The Appellant said that she might have received the statement of account that was sent to her in June 2021.³⁷ She indicated that she kept her documents and that she would send the Tribunal a copy of this statement of account if she had it.³⁸ She said that it didn't specify what she was being asked to pay back.
- g) She was told about any mail that turned up for her at her father's address or at her ex-partner's. She would then go and get it.³⁹
- h) After receiving a first letter saying that she owed money (statement of account), she contacted Service Canada twice, but she could not get someone to explain what she owed.⁴⁰
- i) In October 2021, the CRA told her that she had until April 30, 2022, to contact its collections centre. She says that she understood from her conversation with the CRA that she had until the end of April 2022 to get information about her file concerning the money she owed, to gather evidence, and to request a reconsideration. She explains that there may have been a misunderstanding on her part but that this situation explains the time it took her to request a reconsideration.⁴¹
- j) The Appellant says that she disagrees that she needs to pay back the benefits she received. She hasn't started paying back the money she owes the Commission.

³⁷ See GD3-25 to GD3-29.

³⁸ The Appellant sent this document to the Tribunal on October 3, 2022—GD5-3.

³⁹ See GD3-37.

⁴⁰ See GD2-5, GD3-32, and GD3-36.

⁴¹ See GD2-5.

[17] In this case, the evidence shows that the Appellant didn't meet the 30-day deadline to ask the Commission to reconsider its February 25, 2020, decisions.

Reasonable explanation

[18] I find that the Appellant hasn't given a reasonable explanation for her delay in asking the Commission to reconsider its February 25, 2020, decisions.

[19] Despite the Appellant's statements that she didn't receive these decisions and that she didn't get copies of them until she went to Service Canada Centre in late March 2022, I find that it is more likely than not that she first received them from the Commission when it mailed them to her. These documents were sent to her ex-partner's address. She says that her ex-partner gave her any mail addressed to her. The Commission says that there is no undeliverable mail in her file.

[20] I find that the Appellant had the opportunity to read the content of these decisions. They say, for example, that she would receive a notice of debt and repayment instructions.⁴² The documents also say that she had 30 days to request a reconsideration of the decisions.⁴³

[21] The Commission also says that, even though she argues that she filed her reconsideration request on time because, on October 26, 2021, the CRA's collections centre told her she had until April 30, 2022, to request a reconsideration, that deadline was for setting up a payment arrangement, not for requesting a reconsideration.

[22] In my view, when the Commission made its decisions on February 25, 2020, there was nothing stopping the Appellant from requesting a reconsideration within the 30-day time limit.

[23] I find that the Appellant hasn't followed up the reasons she gave the Commission for her delay in requesting a reconsideration with any new information showing that she was unable to do so within the time limit.

⁴² See GD3-11 to GD3-15.

⁴³ See GD3-11 to GD3-15.

[24] I agree with the Commission's finding that the Appellant hadn't given a reasonable explanation for her delay in requesting a reconsideration.

Continuing intention to request a reconsideration

[25] I find that the Appellant hasn't shown that she had a continuing intention to request a reconsideration of the February 25, 2020, decisions.

[26] I find that the Appellant had the opportunity to request a reconsideration of these decisions but chose not to take advantage of it. It wasn't until March 2022 that she took steps to that end by first going to a Service Canada Centre.

[27] The February 25, 2020, decisions informed the Appellant that she had 30 days from the date of those decisions to request a reconsideration.⁴⁴

[28] The evidence on file also shows that she was sent a notice of debt on March 21, 2020, as well as monthly statements of account during the period from November 2020 to May 2021.⁴⁵

[29] The Appellant admits that it was on May 19, 2021, that a representative from the CRA's collections centre contacted her about paying back a benefit overpayment related to decisions by the Commission; this didn't happen in January 2022 as she initially said. She was told to get in touch with Service Canada (the Commission) and was given a phone number. She was also told that she had two months to contact the CRA's collections centre.

[30] In my view, the Appellant's statement that the CRA contacted her as early as May 19, 2021, rather than in January 2022, doesn't show that she had a continuing intention to request a reconsideration.

[31] The Appellant also said that she might have received the June 19, 2021, statement of account that was sent to her at the address she had given to the CRA a month earlier—her father's address. She sent the Tribunal a copy of this document on

⁴⁴ See GD3-11 to GD3-15.

⁴⁵ See GD3-16 to GD3-22.

October 3, 2022.⁴⁶ I note that the document says that the money she owes concerns EI.⁴⁷

[32] The Commission explains that, on October 26, 2021, the CRA contacted the Appellant again. It says that the CRA gave her Service Canada's number again.

[33] Despite all the information she got about the Commission's decisions and their financial consequences with the creation of a benefit overpayment, the Appellant didn't take steps to request a reconsideration until March 2022. She went to a Service Canada Centre in late March 2022 and then requested a reconsideration on April 25, 2022.

[34] I find that the Commission correctly determined that the Appellant hadn't demonstrated a continuing intention to request a reconsideration of its February 25, 2020, decisions.

Reasonable chance of success and potential prejudice to the parties

[35] In its arguments, the Commission explains that it didn't consider whether the Appellant's reconsideration request had a reasonable chance of success.⁴⁸ It says that it also didn't consider whether prejudice could be caused to the Commission or another party by allowing a longer period.⁴⁹ It says that it didn't consider these factors because the Appellant hadn't given a reasonable explanation for her delay in requesting a reconsideration and hadn't shown that she had a continuing intention to request a reconsideration.⁵⁰

[36] The Commission also says that, on the issue of the Appellant's voluntary leaving, the reconsideration request would have a reasonable chance of success, and no prejudice would be caused to the Commission or another party by allowing a longer period, but that it was still appropriate to refuse the reconsideration request.⁵¹ On this point, the Commission says that the four conditions set out in the *Reconsideration*

⁴⁶ See GD5-3.

⁴⁷ See GD3-25 to GD3-27 and GD5-3.

⁴⁸ See GD4-4.

⁴⁹ See GD4-4.

⁵⁰ See GD4-4.

⁵¹ See GD4-6.

Request Regulations weren't met (reasonable explanation for the delay, continuing intention to request a reconsideration, reasonable chance of success, and potential prejudice to the parties).⁵²

[37] At the hearing, the Appellant said that she disagreed that she needed to pay back the money she owed for a benefit overpayment following the Commission's decisions.

[38] But, despite her statements on this point, the Appellant has provided no new, relevant evidence to support that her reconsideration request had a reasonable chance of success on the issues mentioned in the Commission's decisions.

[39] The Appellant also hasn't made any arguments about the potential prejudice to the Commission or another party in accepting her reconsideration request.

The Commission's discretion

[40] I am of the view that the Commission exercised its discretion judicially when it denied the Appellant an extension of the 30-day period to request a reconsideration because it considered all the relevant circumstances when it refused her delay in making her request.

[41] I find that, in making its decision, the Commission took into account all relevant factors and ignored any irrelevant factors.

[42] These factors refer to the following: the lack of a reasonable explanation from the Appellant for her delay in requesting a reconsideration and the fact that she didn't have a continuing intention to request a reconsideration.

[43] I also find that the Appellant hasn't shown that the Commission relied on irrelevant factors in refusing to extend the 30-day period to request a reconsideration.

⁵² See GD4-6.

[44] I find that the Commission exercised its discretion judicially when it denied the Appellant an extension of time to request a reconsideration.

Conclusion

[45] I find that the Commission was justified in refusing to extend the 30-day period to request a reconsideration.

[46] This means that the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section