



[TRANSLATION]

Citation: *DA v Canada Employment Insurance Commission*, 2022 SST 1117

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

Decision

Appellant: D. A.
Respondent : Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (475790) dated May 20, 2022
(issued by Service Canada)

Tribunal member: Charline Bourque
Type of hearing : Videoconference
Hearing date: September 8, 2022
Hearing participant: Appellant
Decision date: September 12, 2022
File number: GE-22-2094

Decision

[1] The appeal is dismissed.

[2] The Claimant made his request for reconsideration late, and the Commission exercised its discretion judicially when it refused to extend the time to ask for a decision to be reconsidered.

Overview

[3] On October 20, 2017, the Commission told the Claimant that it had reconsidered his claim for Employment Insurance (EI) benefits, which started on August 16, 2017. The Commission found that the Claimant voluntarily left his job without good cause. Also, it made adjustments to the claimant reports for his earnings for the period from August 28, 2016, to July 30, 2017. The Commission found that the Claimant made five false statements, and imposed a penalty on top of issuing a notice of violation.

[4] On April 20, 2022, the Claimant asked the Commission to reconsider the October 20, 2017, decision. The Commission said that it looked at the reasons the Claimant gave for his delay in asking it to reconsider its decision. But, it is of the view that the Claimant doesn't meet the criteria and, as a result, it refused to reconsider the decision.

[5] Under the *Employment Insurance Act* (Act), a Claimant can ask for a Commission decision to be reconsidered within 30 days from the date it was communicated. But, the Commission can grant an extension of time to ask it to reconsider. So, it is the Commission's discretion.

[6] Because of this, I can only interfere with the decision if the Commission didn't exercise this discretion judicially.

Issue

[7] Was the request for reconsideration made after the 30-day period set out in the Act?

[8] Did the Commission exercise its discretion judicially by refusing to reconsider the Claimant's decision?

Analysis

[9] As was explained to the Claimant, the only issue in this appeal is the reconsideration period. Since the Commission hasn't reconsidered the October 2017 decision on the voluntary leave, earnings, penalties, and notice of violation, I can't make a decision on them.

Issue 1: Was the request for reconsideration made after the 30-day period set out in the Act?

[10] I find that the request for reconsideration was made after the 30-day period set out in the Act; it was made more than 365 days after.

[11] A claimant can ask for a decision to be reconsidered within 30 days after the day the decision is communicated to them or within any further time that the Commission may allow under the *Reconsideration Request Regulations*.¹

[12] On October 20, 2017, the Commission made a decision on a voluntary leave, the claimant reports for the Claimant's earnings from August 28, 2016, to July 30, 2017, a penalty, and a notice of violation.²

[13] The Claimant's request for reconsideration dated April 20, 2022, was received at the Service Canada Centre in Causapsca the same day.³ This means the Claimant made his request for reconsideration 1,613 days late.

Issue 2: Did the Commission exercise its discretion judicially by refusing to reconsider the Claimant's decision?

[14] I am of the view that the Commission exercised its discretion judicially because it acted in good faith and took into account all the relevant circumstances while ignoring

¹ See section 112 of the *Employment Insurance Act*.

² See the initial October 20, 2017, decision (GD3-11/12).

³ See the Request for Reconsideration of an Employment Insurance (EI) decision form (GD3-14/15).

irrelevant ones when it refused to grant an extension of time to ask for a decision to be reconsidered.

[15] The Commission can allow a longer period to make a request for reconsideration of a decision “if the Commission 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.”⁴

[16] Furthermore, since the Claimant made his request for reconsideration more than 365 days late, the Commission also has to be satisfied that the request for reconsideration has a reasonable chance of success and that prejudice would not be caused to any party.⁵

[17] Case law has confirmed that the Commission’s decision to grant an extension of time for it to reconsider a decision is discretionary.⁶

[18] The Federal Court of Appeal found that the Commission’s discretionary decisions should not be overturned unless it can be shown that it didn’t exercise its discretion judicially (that is, acting in good faith) taking into account all relevant factors, and ignoring irrelevant ones.⁷

[19] In other words, I can’t replace the Commission’s view with my own. Instead, I have to determine whether, when making its decision, the Commission acted in good faith, took into account all relevant circumstances in the file while ignoring irrelevant ones, and acted for a proper motive and in a non-discriminatory manner.⁸

[20] So, I have to determine whether the Commission exercised its discretion judicially when it refused to extend the 30-day period for making a request to reconsider its initial decision. If I am of the view that the Commission exercised its discretion

⁴ See section 1(1) of the *Reconsideration Request Regulations*.

⁵ See section 1(2) of the *Reconsideration Request Regulations*.

⁶ See *Daley v Canada (Attorney General)*, 2017 FC 297.

⁷ See *Chartier v Canada Employment and Immigration Commission*, 1990 FCA A-42-90; and *Canada (Attorney General) v Uppal*, 2008 FCA 388.

⁸ See *Canada (Attorney General) v Purcell*, (1996) 1 FC 644.

judicially, I can't grant the Claimant an extension of time to make a request for reconsideration. But, if I find that the Commission didn't exercise its discretion judicially, I can grant the Claimant an extension of time to ask it to reconsider its decision. The Commission would then have to reconsider its initial decision.

[21] As I have mentioned, the claimant requested a reconsideration 1,613 days late.

[22] The Claimant says the delay was because he was [translation] "young and careless." He says that the person who made the initial decision discouraged him by saying there was nothing that could be done. Now, he is in a difficult financial situation where repaying the debt is a burden on his family.⁹ He was also told he could have challenged the decision. He didn't believe it was possible.

[23] I find that the Commission took into account the factors set out in sections 1(1) and 1(2) of the *Reconsideration Request Regulations*.

[24] The Commission found that the Claimant didn't give a reasonable explanation for requesting a longer period and that he didn't demonstrate a continuing intention to ask for the October 2017 decisions to be reconsidered. Also, the Commission isn't satisfied that the Claimant's request for reconsideration has a reasonable chance of success. During the 22745250A4 investigation leading to the Commission's decisions, the Claimant was able to explain the issues related to finances to the investigator. The information given by the Claimant in his request for reconsideration was already known at the time of the initial decisions. Finally, the Commission doesn't find that granting the Claimant further time would cause prejudice to him or any other party.¹⁰

[25] I find that, at the hearing, the Claimant gave similar explanations to those he had given the Commission to explain his delay in filing his appeal. The Claimant explained that he was young and misinformed. The person who made the decision discouraged him. The Claimant didn't try to get more information.

⁹ See the Claimant's explanations about his income (GD5-2/3).

¹⁰ See the Commission's arguments to the Tribunal (GD4).

[26] It is generally recognized that, despite there being good faith, ignorance of the Act can't justify a delay in asking for a decision to be reconsidered. I also can't refuse to apply the Act despite the fact that I understand the Claimant's financial difficulties.¹¹

[27] I also take into account that the Commission finds that a reconsideration would not cause prejudice to the parties even though it isn't satisfied that the request for reconsideration has a chance of success.

[28] I understand the Claimant's financial difficulties, and I understand that he wants to put the situation behind him and move on to other things. Unfortunately, I can't interfere with the Commission's decision.

[29] I am of the view that the Commission acted in good faith, and took into account all relevant circumstances in the file while ignoring irrelevant ones, when it refused to grant an extension of time to ask for a decision to be reconsidered.

[30] I am of the view that the Commission exercised its discretion judicially when it refused to extend the time to ask for the decision to be reconsidered. This means that I can't interfere.

Conclusion

[31] The appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section

¹¹ See *Granger v Commission (CEIC)*, FCA A-684-85; *Wegener v Canada (Attorney General)*, 2011 FC 137.