



[TRANSLATION]

Citation: *CB v Canada Employment Insurance Commission*, 2022 SST 1393

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

Decision

Appellant: C. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (459730) dated February 15, 2022 (issued by Service Canada)

Tribunal member: Manon Sauvé
Type of hearing: Teleconference
Hearing date: May 26, 2022
Hearing participant:
Decision date: June 22, 2022
File number: GE-22-1018

Decision

[1] The appeal is allowed. The Commission didn't exercise its discretion judicially when it denied the Claimant an extension of time.

Overview

[2] On March 20, 2015, the Claimant applied for Employment Insurance (EI) benefits.

[3] On March 8, 2017, the Commission told the Claimant that it had reconsidered his claim. It found that he hadn't declared all his earnings while unemployed. It asked him to pay back the benefits he was overpaid and assessed him a penalty of \$9,000. This means that he has to pay the Commission more than \$15,000.

[4] On January 28, 2022, the Claimant asked the Commission to reconsider. He disagrees with the penalty.

[5] The Commission determined that the Claimant was 1,757 days late in asking it to reconsider. The law sets out a 30-day period.

[6] But the Commission can extend that period if the claimant shows that they had a reasonable explanation, a continuing intention to request a reconsideration, and, for delays of more than one year, that the matter discloses an arguable case, and that it would cause no prejudice.

[7] After investigating, the Commission denied an extension of time. The Claimant has known since March 2017 that the Commission wants him to pay back benefits he was overpaid and to pay a penalty. He made a repayment agreement for his debt.

[8] The Claimant is asking for a reconsideration of the decision because he didn't know he could.

Matter I have to consider first

[9] The Claimant wasn't at his May 26, 2022, hearing. I noted that he had received proper notice. The Tribunal did remind him of the date and time of the hearing.

[10] The regulations say that I may proceed in a party's absence if I am satisfied that the party received notice of the hearing.¹ So, I proceeded in the Claimant's absence.

Issues

1. Was the reconsideration request made late?
2. Did the Commission exercise its discretion judicially when it denied the Claimant an extension of the 30-day period to request a reconsideration?

Analysis

[11] Any person who is the subject of a decision of the Commission can make a request for a reconsideration of that decision at any time within 30 days after the day the decision is communicated to them, or any further time that the Commission may allow.²

[12] The Commission's decision whether to allow a longer period to request a reconsideration is discretionary.³ The Commission's discretion has to be exercised based on the factors in the *Reconsideration Request Regulations*.

[13] The Commission may allow a claimant more time to request a reconsideration if it is satisfied that there is a reasonable explanation for requesting a longer period and the claimant has demonstrated a continuing intention to request a reconsideration.⁴

¹ Section 12 of the *Social Security Tribunal Regulations*.

² Section 112(1) of the *Employment Insurance Act*.

³ *Daley v Canada (Attorney General)*, 2017 FC 297.

⁴ Section 1(1) of the *Reconsideration Regulations*.

[14] In addition, when the request is made more than a year after the initial decision, the Commission has to be satisfied that the request for reconsideration has a reasonable chance of success and would cause no prejudice.⁵

[15] I have to decide whether, in denying an extension of time to request a reconsideration, the Commission acted in good faith, with proper purpose and motive; considered all relevant factors, ignoring any irrelevant factors; and acted in a non-discriminatory manner.⁶

[16] I can intervene only if I determine that the Commission didn't exercise its discretion judicially. If I find that it didn't exercise its discretion judicially, then I will give the decision that the Commission should have given.

Issue 1: Was the reconsideration request made late?

[17] Yes. The Claimant was late in requesting a reconsideration. The decision was made on March 3, 2017. The Claimant requested a reconsideration on January 28, 2022, more than a year after the decision.

[18] He knew a decision was made asking him to pay back benefits he was overpaid and to pay a penalty, since he had an agreement to settle his debt.

Issue 2: Did the Commission exercise its discretion judicially when it denied the Claimant an extension of the 30-day period to request a reconsideration?

[19] In this case, the reconsideration request was made more than a year after the decision. This means that the Commission had to assess the request in light of the four factors set out in the Regulations.⁷ But it considered only two of the factors.

⁵ Section 1(2) of the Reconsideration Regulations.

⁶ *Canada (Attorney General) v Sirois*, A-600-95; *Canada (Attorney General) v Purcell*, A-694-9.

⁷ Sections 1 and 2 of the Reconsideration Regulations.

[20] So, I will look at the first two factors while taking the Commission's submissions into account. For the other two factors, I will consider them, since the Commission didn't.

[21] In my view, by failing to consider two of the four factors, the Commission didn't exercise its power in a discretionary manner [*sic*].

– **Reasonable explanation and continuing intention to pursue the reconsideration request**

[22] I note that the Commission considered only these two factors in assessing the reconsideration request.

[23] The Claimant told the Commission that he didn't know he could request a reconsideration for the \$9,000 penalty for alleged false statements.

[24] In the Commission's view, the Claimant should have looked into it sooner. He received the March 3, 2017, decision and the notice of debts. He could have followed up with the Commission well before January 2022.

[25] In addition, he hasn't shown that he had a continuing intention to pursue his reconsideration request. He made it more than a year after the March 3, 2017, decision.

[26] I find that the Commission acted properly in its assessment. It gave the Claimant a chance to provide explanations, and it took them into account in its decision.

– **Reasonable chance of success**

[27] I note that the Claimant disagrees with the Commission's decision to fine him \$9,000 for the alleged false statements.

[28] The Commission failed to consider this factor. In my view, it is an important factor in the circumstances. There was no consideration of whether the case had a reasonable chance of success, since the Claimant didn't have the opportunity to provide explanations. It must be understood that the Commission made its initial decision without talking to the Claimant.

[29] In the circumstances, I find that the case has a reasonable chance of success. When it comes to false statements, the consequences are serious for a claimant. Given that this is a question of fact and that the Claimant has to provide his version of the facts, it is appropriate to hear him on this issue. This may change the penalty decision.

– **Prejudice**

[30] In my view, there would be no prejudice to the Commission if it were to reconsider the March 3, 2017, decision. The Claimant has already been paid, and he has started paying back his debt.

[31] I find that there is a risk of prejudice to the Claimant. He has a penalty of \$9,000, and he was unable to provide explanations for the false statements alleged by the Commission.

[32] After considering the evidence on file, I find that the Commission didn't exercise its discretion judicially. It didn't consider two factors in its assessment when it refused the reconsideration request.

[33] For this reason, I have considered the four factors, and I have found that an extension of time must be granted for the reconsideration request.

Conclusion

[34] The Commission didn't exercise its discretion judicially. An extension of time must be granted.

[35] The appeal is allowed.

Manon Sauvé
Member, General Division – Employment Insurance Section