



Citation: *CA v Canada Employment Insurance Commission*, 2022 SST 1253

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

# **Decision**

**Appellant:** C. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (464471 and 464150) dated March 27, 2022 (issued by Service Canada)

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**Tribunal member:** Linda Bell

**Type of hearing:** Videoconference

**Hearing date:** July 21, 2022, and August 30, 2022

**Hearing participant:** Appellant

**Decision date:** September 9, 2022

**File number:** GE-22-1876 and GE-22-1877

## Decision

[1] I am dismissing both appeals (GE-22-1876 and GE-22-1877). I disagree with the Claimant.

[2] The Commission acted properly when refusing the Claimant an extension of time to file her reconsideration request.

## Overview

[3] The Claimant established a claim for Employment Insurance (EI) sickness, maternity, and parental benefits effective October 18, 2015.

[4] The Commission conducted reviews of her claims. It determined the Claimant knowingly made false statements when she failed to declare her earnings from X and X (also known as X).

[5] The Commission wrote to the Claimant on June 12, 2018, telling her that it allocated her undeclared earnings from X to the weeks of January 15, 2017, and January 22, 2017. This resulted in a \$792.00 overpayment of benefits. The Commission also imposed a \$396.00 penalty for one false statement and issued a violation classified as minor.

[6] Then the Commission wrote to the Claimant on August 17, 2018, stating it had allocated her undeclared earnings from X to the weeks of October 25, 2015, to February 14, 2016. This resulted in an \$11,880.00 overpayment of benefits. The Commission explained it imposed a \$3,158.00 penalty for five false statements and issued a violation classified as very serious.

[7] On March 17, 2022, the Commission received a request for reconsideration from the Claimant. This is more than three years and seven months after the Commission issued the decision letters on June 12, 2018, and August 17, 2018. The Commission refused to reconsider both decisions because the Claimant submitted her reconsideration request late, after the allowable 30-day period.

[8] The Commission says the Claimant doesn't meet the criteria for an extension of time to request reconsideration. The Claimant disagrees and says she didn't work during the periods in question because she was receiving medical treatment during that time. She argues the Commission denied her reconsideration request when Canada Revenue Agency (CRA) was still processing an insurability ruling on her employment with X.

## **Matters I must consider first**

### **Joining two appeals**

[9] I have decided to join the Claimant's appeals (GE-22-1876 and GE-22-1877).<sup>1</sup> This is so the Claimant could present the merits of each appeal during the same hearing. This also means that I will issue only one decision. Here is what I considered when deciding to join the appeals.

[10] In the matters at hand, I found there is a common fact pattern relating to the reasons for the Claimant's delay in requesting reconsideration of the Commission's decisions. I also found that there would be no injustice with hearing these appeals together. Determining these appeals together will allow them to proceed more quickly, while upholding the principles of fairness and natural justice.<sup>2</sup>

### **Late appeals and adjournments**

[11] The Claimant submitted her appeal to the Tribunal late, a month after the 30-day time limit. I granted her an extension of time to submit her appeal after placing a greater weight on the fact that she presented an arguable case.

[12] The Claimant continued to delay in proceeding with her appeal by requesting adjournments, as set out below.

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<sup>1</sup> Section 13 of the *Social Security Tribunal Regulations* (SST Regulations) states that the Social Security Tribunal (Tribunal) may deal with two or more appeals together (jointly) if a common question of law or fact arises in the appeals when it will not cause injustice.

<sup>2</sup> See section 3(1)(a) of the SST Regulations.

[13] On June 23, 2022, the Tribunal informed the Claimant the hearing was scheduled to proceed via videoconference on July 11, 2022.

[14] On June 29, 2022, the Claimant requested an adjournment stating there had been a tragic death in the family. I granted the adjournment and adjourned the hearing to July 21, 2022.

[15] On July 21, 2022, the Claimant attended the hearing and discussed the issues under appeal. She requested more time to submit medical evidence she said was relevant that she had in storage. I granted her leave to submit more evidence no later than August 19, 2022, and adjourned the hearing to August 30, 2022. The Claimant failed to submit additional documents or evidence before the August 30, 2022, adjourned hearing.

[16] On August 30, 2022, ninety-five minutes before the start of the hearing, the Claimant sent an email requesting a one-week adjournment stating she was “extremely under the weather.” I refused this adjournment request.

[17] The Claimant attended the hearing via audio, without using her video. Her voice sounded strained and she presented as feeling unwell. I explained that I would not be adjourning the hearing.

[18] However, in consideration that her voice was sounding strained and she only asked for a few days’ delay, I granted her until September 5, 2022, to submit any additional evidence or statements via email. I explained I would be closing the hearing and proceeding to determine the merits of the appeals on September 6, 2022, without further delay.

[19] The Claimant failed to submit any further evidence or written statements. Accordingly, I now proceed with determining the merits of these appeals.

## **Issues**

[20] Did the Claimant submit her reconsideration request late?

[21] If yes, did the Commission exercise its discretion judicially (properly) when it denied her an extension of time to request reconsideration?

[22] Can I reduce or write off the overpayment or penalty?

## Analysis

[23] When you are late in asking for a reconsideration, the Commission has to decide whether it will accept your late reconsideration request. Put another way, the Commission has to decide whether it will extend the 30-day deadline to request reconsideration.

[24] When deciding to extend the 30-day deadline, the Commission asks two questions:

- Do you have a reasonable explanation for the delay?
- Have you shown you always meant to ask for a reconsideration even though you were late?<sup>3</sup>

[25] This means that a claimant has shown they intended to ask for reconsideration throughout the entire period of the delay. In this case, the entire period of delay is from July 12, 2018 (30 days after the first decision was communicated to the Claimant) to March 17, 2022.

[26] In some cases where the period of delay is more than 365 days, the Commission may have to consider additional factors.<sup>4</sup> The additional factors only apply where the claimant has provided a reasonable explanation for the delay and has shown a continuing intention to request reconsideration.

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<sup>3</sup> As listed in section 1(1) of the *Reconsideration Request Regulations*.

<sup>4</sup> Section 1(2) of the *Reconsideration Request Regulations* states the circumstances where 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.

[27] The Commission makes its own decisions about accepting or refusing late reconsideration requests. This is called a discretionary power.<sup>5</sup>

[28] Even though the Commission has discretionary power to accept or refuse a late reconsideration request, the Commission must make its decision fairly. The Commission must look at all of the information when it makes a decision. The Commission should pay attention to important information about why your request was late and ignore things that are not important.<sup>6</sup>

[29] I must respect the Commission's discretionary power. Usually, this means that I can't change the Commission's decision. But, if the Commission didn't make its decision fairly, then I can step into the Commission's role. Then, I may make the decision to accept or refuse the late reconsideration request.

### **Did the Claimant submit her reconsideration request late?**

[30] Yes, I find that the Claimant submitted her reconsideration request late, after the 30-day time limit.

[31] As stated above, if a claimant disagrees with a decision of the Commission, they have 30 days from the date the decision was communicated to them, to request reconsideration.<sup>7</sup>

[32] The Commission provided evidence that they sent the June 12, 2018, and August 17, 2018, decisions to the Claimant via mail. It mailed the decisions to the same address the Claimant listed on her October 20, 2015, application for benefits. This is the same address the Claimant listed on the Request for Reconsideration form she submitted almost four years later on March 17, 2022. The Claimant admitted she received the decision letters.

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<sup>5</sup> In *Canada (Attorney General) v. Knowler*, A-445-95, the Federal Court of Appeal decided the Commission's power to refuse or accept a late request was discretionary.

<sup>6</sup> In *Canada (Attorney General) v. Purcell*, A-694-94, the Federal Court of Appeal states that the Commission must consider all relevant factors, ignore irrelevant factors, act in good faith, and act in a manner that is not discriminatory.

<sup>7</sup> The timeline is set out in section 112(1)(a) of the *Employment Insurance Act* (Act).

[33] The Commission received the Claimant's reconsideration request on March 17, 2022. This was three years and seven months after the Commission communicated their decisions to the Claimant. The Claimant had 30 days to request reconsideration, so she submitted her reconsideration request late.

– **Reasonable explanation for the delay**

[34] I agree with the Commission when it states the Claimant hasn't provided a reasonable explanation for the delay in requesting reconsideration. Here is what I considered.

[35] The Commission noted that although the Claimant has been, "in fairly consistent" contact with the Commission, she failed to file a request for reconsideration even though she was repeatedly told to do so.

[36] The documents on file show the Canada Revenue Agency (CRA) had been sending the Claimant Notices of Debt and monthly statements. The documents also show the Claimant had discussions with CRA about the debt. During those conversations, she agreed to start making payments towards her debt as of May 28, 2019. This occurred two years and 10 months before she submitted her request for reconsideration.

[37] In the Commission's notes, it states the officer specifically instructed the Claimant to submit a reconsideration request on April 14, 2020, but she waited another two years to do so.

[38] The evidence shows me that in the spring of each year, around income tax time, the Claimant contacted the Commission enquiring about the overpayments. Then on March 17, 2022, the date she submitted her reconsideration request, the Claimant told the Commission she was pregnant and needed to start a new maternity claim. She said she was in dire financial need and in danger of Canada Revenue Agency (CRA)

keeping her tax refund. She also said they told her if she could get an appeal submitted that would stop CRA from collecting the debt.<sup>8</sup>

[39] I can see the Commission documented that the Claimant told them she delayed in submitting her reconsideration request due to severe health issues. But the medical information on file doesn't support her argument because it only shows she was ill prior to the Notice of Decision. There is no evidence support the Claimant was prevented from contacting the Commission during the delay.

[40] Although the Claimant had been consistent with contacting the Commission every year in the spring, she never followed through with requesting a reconsideration. She was told on more than one occasion to request reconsideration, but never did so until she needed to claim EI maternity benefits. She also failed to submit new evidence to show she didn't work during the period of review or explain the delay in requesting reconsideration. So I agree, the Claimant hasn't provided a reasonable explanation for the delay in requesting reconsideration.

– **Continuous intention to request reconsideration**

[41] The Claimant hasn't always shown she meant to ask for a reconsideration even though she was late.

[42] The documents on file show the Claimant contacted the Commission to enquire about the overpayment on June 12, 2019, March 19, 2020, April 14, 2020, April 30, 2021, and March 16, 2022. Although the Commission explained to the Claimant that she had to send in a reconsideration request, she didn't do so until March 17, 2022.

[43] As stated by the Commission in both Records of Decision, the delay between the conversations on April 30, 2021, until March 17, 2022, is most notable. This is when the Claimant submitted her request for reconsideration.

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<sup>8</sup> See page GD3-54.



[44] I recognize the Commission provides the exact same analogy in both Records of Decision when referring to the notable gap. But, in the Record of Decision relating to X employer (GE-22-1876), it states, “the requestor has not demonstrated a continuing intention to request said reconsideration because of the above named gap in time.”<sup>9</sup> While in the Record of Decision relating to the X employer (GE-22-1877), it states, “The requestor has demonstrated a continuing intention to request said reconsideration because of the above named gap in time.”<sup>10</sup>

[45] Upon review of the analysis provided by the Commission, I accept the Commission made a clerical error by failing to type the word “not” when creating the Record of Decision and stating the Claimant had demonstrated a continuing intention to request reconsideration of the decision to allocate her earnings for X. The Commission’s error doesn’t cause the Claimant any prejudice because the error didn’t prevent her from appealing the reconsideration decision.

[46] After careful consideration of the evidence, I accept the Claimant hasn’t shown a continuous intention to request reconsideration. Namely, the dates the Claimant contacted the Commission, the agreement she made with CRA to repay the debt, and the final period of delay from April 30, 2021, to when she submitted her reconsideration request on March 17, 2022. This means the Claimant hasn’t always shown she meant to ask for a reconsideration of the Commission’s decisions, during the entire period of delay.

– **Additional factors**

[47] As stated above, the additional factors only apply where the claimant has provided a reasonable explanation for the delay and has shown a continuing intention to request reconsideration.

[48] I recognize the Commission provided reasons for the additional factors, in support of their decision. However, as the Claimant hasn’t provided a reasonable

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<sup>9</sup> See page GD3-118 on appeal GE-22-1876.

<sup>10</sup> See page GD3-135 on appeal GE-22-1877.

explanation for the delay or shown a continuing intention to request reconsideration, there is no requirement to assess these factors.

### **Did the Commission exercise its discretion properly?**

[49] Yes, I find that the Commission did exercise its discretion properly when denying the Claimant an extension of time to submit her reconsideration request. Here is what I considered.

[50] On March 18, 2022, the Commission rendered its decision refusing to reconsider its 2018 decisions. In doing so, it issued a Record of Decision documenting how it considered all relevant factors that were before the Commission, ignored irrelevant factors, acted in good faith, and acted in a manner that is not discriminatory.

[51] During a March 18, 2022, telephone conversation the Commission told the Claimant they were refusing to reconsider their decisions and explained her right to appeal. The Commission also wrote this in a decision letter and mailed the letter to the Claimant on March 18, 2022.<sup>11</sup>

[52] After the Commission told the Claimant its decision on March 18, 2022, she called the Commission again, later the same day. She spoke with a different officer and continued to dispute the hours listed on the ROE from X. During that discussion, they discussed requesting an insurability ruling from CRA. On March 23, 2022, the Commission spoke with the Claimant again and confirmed it had requested an insurability ruling from CRA.

[53] The Commission sent a second letter to the Claimant on March 27, 2018, stating it will not be reconsidering its decisions. On April 28, 2022, the Claimant contacted the Commission and confirmed she received the two letters denying her request for reconsideration.

[54] I recognize the Claimant has argued the Commission issued its reconsideration decision before receiving the results of the CRA ruling. But the Claimant didn't request

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<sup>11</sup> See page GD3-118.

the ruling until after the Commission had finalized its decision and told her it was refusing to reconsider the decisions issued in 2018.

[55] When refusing to reconsider its decisions, the Commission says it considered how it relied on the Records of Employment and verification from the Claimant's former employer, verifying her hours and wages. In addition, it considered that the Claimant has been unable to provide any new information to suggest the employer's payroll information is wrong or requires modification. So, I accept the Commission considered all relevant evidence it had before it when deciding to refuse the Claimant's request for reconsideration.

[56] The Commission documented it received the insurability ruling from CRA on May 17, 2022. The ruling confirms the Claimant had insurable hours and earnings from X (also known as X) from October 26, 2015, to February 16, 2016, as allocated by the Commission on August 17, 2018. Although this is evidence that supports the Commission's decisions, it was not evidence that was before the Commission at the time it issued its decision to refuse to extend the time limit to request reconsideration.

[57] After considering all of the evidence before me, I find the Claimant hasn't shown the Commission acted improperly when they made their decision to deny her an extension of time to request reconsideration.

[58] The Commission considered all relevant factors that were before it when determining the Claimant failed to provide a reasonable explanation for the entire period of delay and failed to show a continuing intention to request reconsideration. I see no evidence to show the Commission ignored irrelevant factors, failed to act in good faith, or acted in a manner that was discriminatory. So the Commission acted properly when refusing the Claimant an extension of time to submit her reconsideration request. This means I can't interfere with or change the Commission's decision to deny the Claimant an extension of time to request reconsideration.

[59] I recognize that the Claimant has expressed dire financial need. I am truly sympathetic to her circumstances but my decision is not based on financial need or

fairness. Instead, my decision is based on the facts before me and the application of the law. There are no exceptions. I can't interpret or rewrite the law in a manner that is contrary to its plain meaning, even in the interest of compassion.<sup>12</sup>

## **Conclusion**

[60] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section

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<sup>12</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301.