



Citation: *TM v Canada Employment Insurance Commission*, 2022 SST 1376

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: T. M.
Representative: B. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (500147) dated July 8, 2022
(issued by Service Canada)

Tribunal member: Suzanne Graves

Type of hearing: Videoconference

Hearing date: October 13, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: October 24, 2022

File number: GE-22-2991

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant

[2] The Claimant can have more time to make his reconsideration request.

Overview

[3] The Claimant applied for Employment Insurance (EI) benefits on October 21, 2021. On January 31, 2022, the Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving benefits because he had not proved that he was available for work.

[4] On June 2, 2022, the Claimant asked the Commission to reconsider its decision. He argued that he was actively seeking employment. The Commission refused to reconsider its decision because the Claimant made his request late, after the 30-day deadline. The Claimant is appealing the Commission's refusal to the Social Security Tribunal (Tribunal).

Issue

[5] I have to decide if the Claimant can have an extension of time to file his reconsideration request. To do this, I must first decide whether his reconsideration request was made late. If it was late, I will then consider whether the Commission exercised its discretion judicially when it made the decision not to extend the time to request a reconsideration.

[6] If the Commission did not properly exercise its discretion, I will make the decision the Commission should have made based on the requirements set out in the *Reconsideration Request Regulations* (Regulations). These requirements include whether the Claimant had a reasonable explanation for the delay and whether he showed a continuing intention to request a reconsideration.

Analysis

[7] You can ask the Commission to reconsider a decision up to 30 days from the date the Commission communicates its decision to you. If you make your request after the 30-day period, the Commission may allow more time if it is satisfied that you have a reasonable explanation for requesting more time, and you have shown a continuing intention to request reconsideration.

[8] If you make a reconsideration request more than 365 days after the decision was communicated to you, or you made another application for benefits after you got the decision, two other conditions must be met. The Commission must be satisfied that the request for reconsideration has a reasonable chance of success, and that allowing more time would not cause prejudice to the Commission or any other person.¹

The Claimant's reconsideration request was made late

[9] On January 31, 2022, the Commission decided that the Claimant couldn't receive benefits because he did not prove that he was available for work. After making its decision, the Commission mailed it to the Claimant.

[10] The Claimant testified that he spoke to a Commission officer about the decision on January 21, 2022, and that he received the written decision on March 1, 2022. The Claimant asked the Commission to reconsider its decision on June 2, 2022.

[11] I accept the Claimant's sworn testimony that he received the Commission's decision on March 1, 2022. So his reconsideration request was made late as it was made more than 30 days after he got the decision, but within 365 days of receiving it.

The Commission did not exercise its discretion properly

[12] I find that the Commission did not properly exercise its discretion when it denied the Claimant more time to request a reconsideration. My reasons are set out below.

¹ These four tests are listed in section 1 of the *Reconsideration Request Regulations*.

[13] The Commission may extend the 30-day deadline to request a reconsideration if it decides you meet the relevant tests in the Regulations to extend the deadline.

[14] The Commission's decision to extend the deadline is a discretionary decision. This means I can only change it if the Commission did not exercise its discretion judicially. Acting judicially means the Commission considered all relevant factors, did not consider irrelevant factors, acted in good faith, and did not act in a discriminatory manner.

[15] If the Commission acted judicially, I cannot change its decision. If I find the Commission did not exercise its discretion judicially, I may step into its role and decide whether the Claimant meets the requirements to extend the time to request a reconsideration.

[16] The Commission's record of decision sets out its reasons for refusing to give the Claimant more time to request reconsideration. It decided that the first two criteria of the Regulations apply to the Claimant. The Commission considered whether the Claimant had a reasonable explanation for the delay in making his reconsideration request, and whether he had a continuing intention to make the request.

[17] I find that the Commission properly applied the first two requirements of the Regulations. The other two requirements are not relevant because the Claimant's reconsideration request was made less than one year after the decision was communicated to him, and there is no evidence he made another application for benefits after that decision.

[18] In its record of decision, the Commission states that the Claimant told an officer that he filed his request late because he focused on his job search, and that he assumed he could not make a reconsideration request after 30 days, but did not contact Service Canada to see if he could do so. Additionally, he failed to mail it to the Commission right away, which caused further delay.² The Commission says that the

² The Commission's record of decision dated July 8, 2022, is at GD3-21 to 22.

Claimant has not provided a reasonable explanation for the delay, or a continuing intention to request reconsideration.

[19] I find that the Commission did not exercise its discretion judicially because it did not have all of the relevant facts at the time it made its decision. Specifically, the Commission did not consider the Claimant's testimony that he was dealing with serious ongoing health issues at the time, and a requirement to quarantine during the period of the delay. The Claimant had not disclosed this information to the Commission when it was making its decision. These factors are relevant to whether he had a reasonable explanation for the delay and a continuing intention to request a reconsideration.

[20] Since I have found that the Commission did not act judicially in making its decision, I will make the decision the Commission should have made by applying the relevant tests set out in the Regulations.

Reasonable explanation for requesting a longer period

[21] The Claimant testified that he was dealing with significant health challenges at the time he received the Commission's decision and did not fully understand it. He was also required to quarantine for two weeks during the delay due to close relatives contracting COVID-19.

[22] The Claimant testified in a sincere manner and I have put weight on his evidence that he was dealing with health challenges and did not fully understand the Commission's decision. Although he did not contact Service Canada right away, he sought out the assistance of a workers help centre, where he received advice on the process to make a reconsideration request.

[23] The reconsideration request process took some time, as he communicated with the help centre remotely. He had to sign a paper copy of the reconsideration request and then mail it to the agency, who in turn submitted it to Service Canada by mail.

[24] After considering the Claimant's testimony, I find that he had a reasonable explanation for his delay in requesting a reconsideration.

Continuing intention to request reconsideration

[25] I find that the Claimant demonstrated a continuing intention to request reconsideration because he submitted the request once he fully understood the decision, with the assistance of a workers help centre. As soon as he got advice and assistance, he took steps to challenge the decision. I have taken into account the fact that the Claimant experienced significant health challenges during the period of the delay. It is reasonable that the Claimant formed an intention to challenge the decision only when he fully understood it and became aware of the process to challenge it.

Conclusion

[26] The appeal is allowed.

[27] This means that the Claimant can have additional time to request a reconsideration of the decision made by the Commission on January 31, 2022.

Suzanne Graves
Member, General Division – Employment Insurance Section