



Citation: *MG v Canada Employment Insurance Commission*, 2022 SST 1199

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

## Decision

**Appellant:** M. G.  
**Representative:** D. F.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (433441) dated October 4, 2021  
(issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Videoconference  
**Hearing date:** October 12, 2022  
**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** November 18, 2022  
**File number:** GE-22-2553

## **Decision**

[1] The appeal is dismissed. The Commission didn't exercise their discretion in a judicial way. But, the Claimant hasn't met the requirements of the law to allow more time to request reconsideration.

## **Overview**

[2] The Claimant applied for employment insurance (EI) sickness benefits. The Commission denied his application. They did so because the Claimant didn't support his application with a medical certificate. The Commission sent the Claimant a letter dated January 11, 2017, notifying him of its decision.

[3] The Claimant asked the Commission to reconsider its decision using a form dated September 3, 2021. The Commission decided that the request did not meet the requirements of the law. It did so because it decided the request was beyond the 30-day reconsideration period.

## **Matter I have to consider first**

[4] The Claimant said in his notice of appeal that he did not have a representative. The General Division of the Tribunal dismissed his appeal. The Claimant filed an appeal with the Appeal Division of the Tribunal. He had asked that his partner be added as his representative before the Appeal Division. The Appeal Division allowed the Claimant's appeal. It decided the process followed by the General Division was not fair.

[5] At the re-hearing of the Claimant's appeal at the General Division of the Tribunal, the Claimant's partner was listed as his representative. I asked her to clarify her role. After explaining the difference between a representative and a witness, she said that she would act as representative. Given her apparent role at the first hearing before the General Division, and in order to allow for sworn testimony, I had the Claimant's partner take a solemn affirmation.

## Issue

[6] Did the Commission exercise its discretion in a judicial way when it denied the Claimant's request to extend the 30-day period to request reconsideration of the Commission's initial decision?

- Did the Claimant ask the Commission to reconsider their initial decision within 30-day reconsideration period?
- Did the Claimant give a reasonable explanation for requesting a longer period?
- Has the Claimant shown a continuing intention to request reconsideration?
- Does the Claimant's request for reconsideration have a reasonable chance of success?
- Would there be prejudice to the Commission by allowing a longer period to make the request?

## Analysis

[7] A claimant can ask the Commission to reconsider its decision at any time within 30 days after the day the Commission communicates the decision to them.<sup>1</sup> The Commission can give more time for such a request.<sup>2</sup> If it allows more time, the Commission must be satisfied that there is a reasonable explanation for asking for a longer period. It must also be satisfied that the claimant has demonstrated a continuing intention to request reconsideration.<sup>3</sup>

[8] The Commission must be satisfied of two more things for requests made after one year. The first is that the request for reconsideration has a reasonable chance of success. The second is that no prejudice would be caused to the Commission by allowing a longer period to make the request.<sup>4</sup>

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<sup>1</sup> See section 112(1)(a) of the *Employment Insurance Act (Act)*.

<sup>2</sup> See section 112(1)(b) of the Act.

<sup>3</sup> See section 1(1) of the *Reconsideration Regulations*.

<sup>4</sup> See section 1(2)(a) of the *Reconsideration Regulations*.

– **Did the Claimant ask the Commission to reconsider its initial decision within the 30-day reconsideration period?**

[9] No, the Claimant did not do so.

[10] The Commission notified the Claimant of its initial decision in a letter dated January 11, 2017.

[11] The Claimant testified that he worked in a different city from the one he used as his permanent address. The Claimant's mother lives at the permanent address he uses. He and his representative (witness) gave reasons for using this address. This included the Claimant moving from place to place in the city where he worked, and not being able to get a post office box. The Claimant usually returned to his mother's home on weekends.

[12] The Claimant and his witness testified about his not having money to insure his truck. For this reason, he couldn't travel to his mother's home for approximately six months from January 2017 to June 2017. The Claimant's witness said that whenever his truck was re-insured around June 2017, the Claimant would have gone to his mother's home and gotten the letter.

[13] The Claimant testified that he couldn't remember details, in part due to the amount of time that has passed since 2017. But, I have no reason to doubt his evidence that he couldn't drive home until sometime in June 2017 because his truck wasn't insured. So I find that he likely got the Commission's letter by July 3, 2017. This means that he had until August 2, 2017 to ask the Commission to reconsider its decision.

[14] The Claimant asked the Commission to reconsider its decision using a form dated September 3, 2021. So, I find that he didn't ask the Commission to reconsider its decision within 30 days of when it communicated the initial decision to him.

– **Did the Claimant give a reasonable explanation for requesting a longer period?**

[15] The Claimant didn't give a reasonable explanation for requesting a longer period to ask the Commission to reconsider its initial decision.

[16] In his notice of appeal, the Claimant said he was in a remote town, without a car computer, or reliable phone. Because of this, he explained could not access his doctor to ask for a medical certificate the Commission asked for. He also couldn't go to a Service Canada office. He said the closest Service Canada was in the town where his mother lived, which he went to on weekends.

[17] In updated submissions, the Claimant said he didn't have a phone to call Service Canada. He said it wasn't reasonable to borrow a co-worker's phone since he would use the phone for an extended period while on hold with Service Canada. He would also have to give sensitive, personal information to the co-worker to explain why he needed to borrow the phone.

[18] The Claimant's witness testified that there isn't a Service Canada in the remote town where the Claimant worked. She said the Service Canada where his mother lives isn't open on Mondays, and this is the day when the Claimant could possibly go to Service Canada to get help to request reconsideration. She testified that skipping a day of work wasn't feasible due to road closures and also because of the Claimant's financial situation.

[19] The Commission argues that it isn't reasonable that the Claimant could not attend a local office or contact Service Canada in almost five years.

[20] The Claimant expressed frustration at the hearing, both with the process and with what he had to do to prove that he was entitled to sickness benefits. He testified that not knowing how to deal with the process, he kind of just gave up and without the help of his witness, the process was too much for him.

[21] I understand that going through a process that isn't familiar can be hard. And the Claimant's work in a remote area may have made it harder to get to a Service Canada centre in person.

[22] I have no reason to doubt that the Claimant would have had to take time off work to go to his doctor to get a medical certificate and to go in person to a Service Canada office. I also don't doubt that this would have been hard for him financially. But I don't find that this reasonably explains the delay in requesting reconsideration.

[23] The Commission's decision meant that the Claimant had to repay 12 weeks of sickness benefits he had received. I find this would likely create a bigger financial problem than taking even a few days off work to get the medical certificate the Commission asked for and then to request reconsideration.

[24] The Claimant said his phone was cut off multiple times because he couldn't pay the bill. But, I don't find it reasonable that in the entire four years and three months after he says he got the Commission's initial decision, he was unable at the very least to access a phone to call Service Canada to ask about requesting reconsideration.

[25] The Claimant's witness also pointed out that the Commission's initial decision letter only states that claimants have 30 days to make a request for reconsideration; it doesn't say that the Claimant could still request reconsideration after 30 days along with an explanation for the delay.

[26] What the Claimant's witness says is correct. But I don't find that this prevented the Claimant from getting more information from the Commission through Service Canada. The letter identifies three ways to contact them. And even though I don't doubt that the Claimant is not good with computers and may have literacy issues, as noted above, I find that at the very least, he could have called Service Canada to ask questions. He could then have learned that the law says the Commission can allow more time to request reconsideration.<sup>5</sup>

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<sup>5</sup> See section 112(1)(b) of the Act.

[27] I don't find that the Claimant has given a reasonable explanation for the delay in requesting reconsideration.

– **Has the Claimant shown a continuing intention to request reconsideration?**

[28] No, the Claimant hasn't shown a continuing intention to request reconsideration.

[29] The Claimant says he has shown a continuing intention to request reconsideration. He says he has done so by doing the following:

- responding to all correspondence in a timely way,
- requesting reconsideration, appealing the reconsideration decision, and
- attending and then appealing the decision of the General Division of the Tribunal.

[30] I don't find the points above show that the Claimant had a continuing intention to request reconsideration. Rather, I find the points show that once he requested reconsideration in September 2021, he acted promptly. The Claimant's actions before September 2021 are more helpful to decide this question.

[31] As noted above, the Claimant testified that he didn't know how to deal with the process of requesting reconsideration and just gave up.

[32] The Claimant's witness testified that the Claimant didn't know that he could request reconsideration after the 30-day period, so he thought he was done. She added that he didn't have the education, literacy skills or computer knowledge to figure out that he actually could have requested reconsideration. She said when she found out that the Claimant's wages were being garnished for the repayment of EI benefits, and given the Claimant's financial situation, she looked into it and told the Claimant they had to deal with it.

[33] I found the Claimant and his witness to be candid and credible in their testimony. So I accept that the Claimant was overwhelmed and frustrated and gave up. But I also find this means that until his witness prompted him to deal with the situation, the

Claimant didn't show that he had a continuing intention ask the Commission to reconsider its decision.

– **Does the Claimant's request for reconsideration have a reasonable chance of success?**

[34] I find that the Claimant's request for reconsideration has a reasonable chance of success.

[35] The reason the Commission denied the Claimant's application for benefits was that the Claimant didn't submit a medical certificate to support his application for sickness benefits. The Claimant now has the medical certificate.

[36] I find that the Claimant has an arguable case. It is likely that if given a chance to request for reconsideration, it would succeed. For that reason, I find that the Claimant's request for reconsideration has a reasonable chance of success.

– **Would there be prejudice to the Commission or a party by allowing a longer period to make the request?**

[37] I don't find that there would be prejudice to the Commission by allowing a longer period to make a request for reconsideration.

[38] As noted above, the Claimant now has the medical certificate the Commission asked for. So, even though the Claimant delayed more than four years before asking the Commission to reconsider its decision, I don't find the Commission would be prejudiced by the delay. This is because the Commission would simply have to assess the medical not to see if it meets the requirements of the law.

– **Did the Commission act in a judicial way?**

[39] No, the Commission didn't act in a judicial way.

[40] The Commission's decision to extend the time for a reconsideration request is discretionary.<sup>6</sup> Discretionary decisions of the Commission should not be disturbed

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<sup>6</sup> See *Daley v Canada (Attorney General)*, 2017 FC 297.



unless the Commission didn't act in a judicial way. This means acting in good faith, having regard to all the relevant factors and ignoring any irrelevant factors.<sup>7</sup> If the Commission doesn't act in a judicial way, I can give the decision the Commission should have.<sup>8</sup>

[41] I don't find that the Commission considered all relevant factors the Claimant presented. This is because the Claimant gave additional reasons for his delay in requesting reconsideration. These include his literacy and computer skills, his financial situation, and his views about the information given in the Commission's initial decision letter.

[42] I find the additional reasons the Claimant gave for the delay in requesting reconsideration are relevant to the decision the Commission had to make. So I don't find it acted in a judicial way. So, I will give the decision the Commission should have made.

[43] I find that the Claimant didn't ask the Commission to reconsider its decision within the 30-day reconsideration period. I also find that the Claimant doesn't have a reasonable explanation for the delay and hasn't shown a continuing intention to request reconsideration. So, he hasn't met the requirements of the law to allow a longer period to request reconsideration.

## **Conclusion**

[44] The appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section

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<sup>7</sup> See *Canada (Attorney General) v. Sirois*, A-600-95; *Canada (Attorney General) v. Chartier*, A-42-90.

<sup>8</sup> See section 54(1) of the *Department of Employment and Social Development Act*.