



Citation: *HM v Canada Employment Insurance Commission*, 2022 SST 1693

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: H. M.
Representative: D. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (461949) dated March 24, 2022
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Videoconference
Hearing date: July 15, 2022
Hearing participants: Appellant
Appellant's representative

Decision date: July 25, 2022
File number: GE-22-1385

Decision

[1] The appeal is dismissed. The Commission exercised its discretion in a judicial way when it denied the Claimant's requests to extend the 30-day reconsideration period.

Overview

[2] The Claimant applied for employment insurance (EI) regular benefits. The Commission decided that the Claimant didn't declare all of her earnings. It also decided that she voluntarily left her job without just cause. The Commission sent the Claimant a letter dated December 9, 2019, notifying her of its decision.

[3] The Claimant asked the Commission to reconsider its decision using a form dated February 28, 2022. The Commission decided that the request did not meet the requirements of the law. It did so because it was sent beyond the 30-day reconsideration period.

Issue

[4] Did the Commission exercise its discretion in a judicial way when it denied the Claimant's request to extend the 30-day time limit to request reconsideration?

- Did the Claimant ask the Commission to reconsider its decision within the time limit?
- Did the Claimant give a reasonable explanation for asking for more time?
- Has the Claimant shown that she continued to want 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 more time to make the request?

Analysis

[5] When the Commission makes a decision, a claimant can ask it to reconsider the decision. They have to do so within a time limit. This is 30 days after the Commission

communicates the decision to them.¹ The Commission can give more time for such a request.² To give more time, it must be satisfied of two things:

- there is a reasonable explanation to ask for more time;
- the person has shown they continue to want to ask for reconsideration.³

[6] If a claimant makes the request after one year, the Commission must be satisfied of two more things:

- the request for reconsideration has a reasonable chance of success; and
- no prejudice would be caused to the Commission by allowing more time to make the request.⁴

[7] The Commission's decision to give more time for a reconsideration request is discretionary.⁵ I can't disturb this kind of decision unless the Commission failed to act in a judicial way. This means acting in good faith, having regard to all the relevant factors and ignoring any irrelevant factors.⁶

– **Did the Claimant ask the Commission to reconsider its decision within the time limit?**

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

[9] The Commission notified the Claimant of its initial decision in a letter dated December 9, 2019. The Claimant asked the Commission to reconsider its decision using a form dated February 28, 2022. In that form, she said the Commission communicated its decision to her verbally on December 9, 2019. She testified that she got the Commission's decision letter probably about a week after the date on the letter.

¹ Paragraph 112(1)(a) of the *Employment Insurance Act*.

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

³ Subsection 1(1) of the *Reconsideration Regulations*.

⁴ Paragraph 1(2)(a) of the *Reconsideration Regulations*.

⁵ *Daley v. Canada (AG)*, 2017 FC 297

⁶ *Canada (AG) v. Sirois*, A-600-95; *Canada (AG) v. Chartier*, A-42-90

[10] The Claimant testified that she read the letter, but only the first page. She said that she immediately called the number found at the top of the letter. Even though she didn't read all of the letter, I find the Commission communicated its decision to the Claimant verbally on December 9, 2019, and then by letter when the Claimant got it.

[11] I don't see evidence that the Claimant asked the Commission to reconsider its decision other than with the form dated February 28, 2022. So, I don't find that she did so within the 30-day time limit.

– **Did the Claimant give a reasonable explanation for asking for more time?**

[12] I don't find that the Claimant gave a reasonable explanation for asking for more time.

[13] In her request for reconsideration, the Claimant said she spoke to someone at Service Canada in 2020. She said he was going to send her some forms to complete, but she didn't get them. The Claimant said she moved shortly after that, but thought everything was taken care of.

[14] The Claimant's mother acted as her representative and as a witness at the hearing. She said she and the Claimant spoke to the Service Canada representative together. She said the representative said if they didn't hear anything, the Commission probably realized that it had made a mistake.

[15] The Claimant testified that she didn't follow-up with Service Canada after her first call. She said that since she didn't receive anything, she thought everything was fine. She added that she applied for EI benefits after that, so she thought everything had been dealt with since her application was accepted.

[16] I don't find that this explanation is reasonable. The Commission's decision resulted in a penalty of \$2,488. It states in its December 9, 2019 letter that it would shortly send her a notice of debt. In her reconsideration request, the Claimant said the balance owing is \$8,076.92.

[17] I don't find it reasonable to assume that not getting documents from Service Canada or having another application for benefits accepted meant that everything was okay. The Claimant could have followed up to ask about the documents. She could also have tried to confirm whether the issue that resulted in the debt was resolved.

[18] I also don't find it reasonable that the Claimant would read only the first page of a three-page letter. If she had read the whole letter, she would have known exactly what to do if she disagreed with the Commission's decision. She would also have seen the time limit.

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

– **Has the Claimant shown that she continued to want request reconsideration?**

[20] No, the Claimant hasn't shown that she continued to want to request reconsideration.

[21] The Claimant testified that she found out that a person where she was living was stealing her mail. She said this might be why she didn't hear anything after she called Service Canada. The Claimant when she did get a letter, she wasn't happy about it, and then decided to follow through with the request for reconsideration.

[22] The Claimant's witness testified that they received a statement of account. She said that when they got it, they called the number on the statement. The person they spoke to told them what to do.

[23] I understand that the Claimant may have thought the issue with the Commission was taken care of. I have found that this wasn't a reasonable conclusion in the circumstances. But, since she didn't follow up, I don't find that she has shown that she continued to want to request reconsideration.

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

[24] No, I don’t find that the Claimant’s request for reconsideration has a reasonable chance of success.

[25] The Commission decided that the Claimant didn’t declare all of her earnings. It imposed a penalty and notice of violation. The Claimant said that she didn’t realize she had miscalculated her earnings. She said she is willing to pay back the few hundred dollars difference in her declared earnings.

[26] The Commission found that the Claimant voluntarily left her job without just cause. The Claimant said she was in school at the time. She said the hours of work weren’t suitable for her as a full-time student.

[27] The Commission says that the Claimant’s request doesn’t have a reasonable chance of success. It says this because it doesn’t consider the reason the Claimant gave for leaving her job to be just cause.

[28] Case law says that if you quit your job to go to school, you don’t have just cause for leaving your job.⁷ And the Claimant agrees that she made mistakes declaring her earnings. Because of this, I don’t find her request for reconsideration has a reasonable chance of success.

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

[29] I don’t find that there would be prejudice to the Commission by allowing more time to make a request for reconsideration.

[30] The Commission doesn’t believe it will be prejudiced by allowing the Claimant more time to request reconsideration. I have no reason to doubt this position. So, I find that the Commission would not be prejudiced if the Claimant is given more time to request reconsideration.

⁷ See *Canada (Attorney General) v Caron*, 2007 FCA 204.

Conclusion

[31] I find that the Commission exercised its discretion in a judicial way when it denied the Claimant's request to extend the 30-day reconsideration time limit. This means the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section