



Citation: *SV v Canada Employment Insurance Commission*, 2023 SST 591

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

## Decision

**Appellant:** S. V.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (554004) dated November 15, 2022 (issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** Teleconference

**Hearing date:** February 22, 2023

**Hearing participant:** Appellant

**Decision date:** February 24, 2023

**File number:** GE-23-234

## Decision

[1] The appeal is dismissed.

[2] The Appellant's request for reconsideration was late.

[3] When the Canada Employment Insurance Commission (Commission) made their decision to deny the Appellant additional time to request a reconsideration they did not act judicially because they failed to consider relevant factors.

[4] In making the decision the Commission should have made, I find the Appellant does not meet all of the factors under the law in order to get an extension to the time in which she can ask for a reconsideration.

[5] This means the Commission will not be reconsidering their original decisions.

## Overview

[6] The Appellant says she applied for Employment Insurance (EI) benefits in March 2012, but was denied, because she did not have enough hours of insurable employment.

[7] She says that she was in a car accident in June 2012, told the Commission about this, and they offered her sickness benefits. She says she agreed to take sickness benefits and was paid them for several weeks.

[8] In October 2022, she asked the Commission to reconsider her claim that she filed which had insufficient hours (the March 2012 claim) and the amount of sickness benefits she received.

[9] The Commission decided not to reconsider the Appellant's claims. They decided the Appellant's reconsideration request was outside the 30-day time limit to request a reconsideration and the explanation she provided for the delay did not meet the requirements of the law for the Commission to reconsideration a decision after the 30-day time limit had ended.

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

[10] The Commission sent in late submissions, which I accepted and considered when making my decision, because the Commission could not have sent in the submissions any earlier since the submissions were related to documents the Commission had just received the day before.

## **Issues**

[11] If the Appellant's request for reconsideration was late.

[12] If so, whether the Commission act judicially in its decision to deny the Appellant more time to file a reconsideration.

## **Analysis**

### **If the Appellant's request for reconsideration was late.**

[13] The Appellant can make a request to the Commission for a reconsideration of a decision the Commission made about her case, any time within 30 days after the day the decision was communicated to her.<sup>1</sup>

[14] So, what I need to determine is when the decision(s) the Appellant is disputing where communicated to her.

### **The decision(s) the Appellant wants reconsidered**

[15] The Appellant testified that her primary concern was having the Commission review their decision she did not have enough hours of work to qualify for benefits when she applied in March 2012. She is also questioning if there are more weeks of sickness benefits payable to her.

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<sup>1</sup> Subsection 112(1) of the *Employment Insurance Act*

[16] In their submissions the Commission only speaks about their decision regarding sickness benefits. However, in their reconsideration process, they spoke to the Appellant about efforts she had made up to 2014 on her claim,<sup>2</sup> and she says these efforts were related to not having enough hours of insurable employment.

[17] The Commission says in their record of decision that the Appellant was in contact with them from 2013 to 2014 regarding a matter of missing insurable hours on a prior claim.<sup>3</sup>

[18] The Commission also speaks about the Appellant not providing more medical information related to sickness benefits in their record of decision.<sup>4</sup>

[19] I find that I am looking at the decisions related to both the Appellant's sickness benefits and her claim in March 2012 for which she was denied for not having enough hours.

[20] I find as such because it is clear the Appellant requested a reconsideration of both issues in her reconsideration request. I further find the letter stamped 2014 is related to the Appellant's issue of not having enough hours of work to qualify for EI because it is from the Canada Revenue Agency (CRA) EI appeal division which supports it is related to an EI claim and the CRA is who deals with determining hours of employment.

[21] I note the Commission also says in their record of decision the Appellant was in contact with them in 2013 and 2014 about missing hours from a previous claim, which further supports the 2014 letter is about that issue.

[22] I further find, as the Commission considered the 2014 letter, the Appellant's efforts to contact them about her claim that did not have enough hours, and her sickness benefits, during the reconsideration process, it is clear the Commission turned

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<sup>2</sup> GD03-21

<sup>3</sup> GD03-23

<sup>4</sup> GD03-23

their mind to both decisions (the decision on not having enough hours and decision on sickness benefits) so this means their reconsideration decision covers both decisions.

[23] I find that since my jurisdiction flows from the reconsideration decision,<sup>5</sup> because the Commission turned their mind to both decisions, and their reconsideration decision covers both decisions, I have the jurisdiction to look at both decisions.

### **When the decision(s) were communicated**

[24] The Federal Court of Appeal has said that the decision maker, in other words the Commission, has the burden of proving their decision has been communicated to the Appellant.<sup>6</sup>

[25] Communicating a decision to someone is not as simple as just telling them a decision was made about something.

[26] Communicating a decision requires that the Appellant know the substance of the decision and its effect.<sup>7</sup>

[27] The Appellant says she was aware of the decision giving her sickness benefits in October 2012.

[28] I find the decision letter on her sickness benefits, dated September 27, 2012, was communicated to her no later than October 8, 2012, as I find allowing 10 days for mailing is reasonable. The fact the Appellant testified she became aware of the decision on her sickness benefits in in October 2012, further supports the date of October 8, 2012, as being reasonable.

[29] As for the decision regarding her March 2012 claim, the claim she said was denied for not enough hours of insurable work, the Appellant says she received a

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<sup>5</sup> See section 113 of the *Employment Insurance Act*

<sup>6</sup> *Bartlett v Canada (Attorney General)*, 2012 FCA 230

<sup>7</sup> *Cousins v Canada (Attorney General)*, 2007 FC 469. Para 43 and *Peace Hills Trust Co. v Moccasin*, 2005 FC 1364. para 44.

decision on that matter in January 2014, but kept calling the Commission to see if anything had changed all the way up to the end of 2016.

[30] The Appellant says that when she got the letter stamped January 14, 2014,<sup>8</sup> it told her to call someone, which she did. They discussed the hours she said she was missing from one of her employers, and she was told the only option left at that point was to go to a Tribunal. The Appellant says she declined to attend a Tribunal hearing on the matter. She was told that she should wait and see if maybe the Commission would approve her claim anyway.

[31] The Appellant says from that point on she would occasionally call the Commission to check on her claim, but was always told nothing was happening. She says she did this all the way up to the end of 2016, but then stopped calling, as she was getting disability and so no longer had an interest in EI.

[32] To me, it appears from the January 14, 2014, letter, that the Appellant was dealing with the CRA at that point, and not EI.

[33] However, since the issue of the Appellant's hours still appeared to be a live issue until she declined to proceed any further by turning down the option of going to a Tribunal; further supported by the record of decision saying the Appellant was in touch with the Commission until 2014 about her missing hours, I find the decision about not having enough hours was not communicated to the Appellant until the end of January 2014.

[34] The Appellant only had 30 days from when the decisions were communicated to her to file a reconsideration request.

[35] Her reconsideration request was received by the Commission on October 24, 2022, which is far beyond the deadline (30 days after she received the decision) for either decision.

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<sup>8</sup> GD03-20

[36] This means her request for reconsideration is not just late but is late by many years.

**Whether the Commission act judicially in its decision to deny the Appellant more time to file a reconsideration.**

[37] Since the Appellant's request for reconsideration is late, it is up to the Commission if they want to allow her more time beyond the 30 days to request a reconsideration.

[38] The decision of the Commission on whether to grant additional time for the Appellant to request a reconsideration of a decision is discretionary.<sup>9</sup> Discretionary means it is up to the Commission to do it if they want, it is not something they have to do.

[39] The Commission decided they would not grant the Appellant more time to file a reconsideration.

[40] While the Appellant disagrees with the Commission's decision, I cannot intervene in a discretionary decision unless it was not made judicially.

[41] For a discretionary decision to have been made "judicially" the decision maker, in other words the Commission, cannot have acted in bad faith or for an improper purpose or motive, took into account an irrelevant factor or ignored a relevant factor, or acted in a discriminatory manner. Any discretionary decision that is not made "judicially" should be set aside.<sup>10</sup>

[42] I find the Commission did not act judicially as they failed to consider relevant factors; they failed to consider the Appellant's continued attempts beyond 2014 to call them and check on her file.

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<sup>9</sup> *Daley v Canada (Attorney General)*, 2017 FC 297

<sup>10</sup> *Canada (Attorney General) v Purcell*, 1 FCR 644

[43] The Appellant's calls to the Commission are relevant as one of the things that needs to be considered to determine whether the Appellant should be granted more time to request a reconsideration is if she had a continuing intention to request a reconsideration; her efforts to contact the Commission speak to that intention.

[44] Since the Commission did not make their decision judicially, as they failed to take into account relevant factors, I will give the decision the Commission should have given.<sup>11</sup>

### **The decision the Commission should have given**

[45] The law states that if a request for reconsideration is made more than 30 days from the date the decision was communicated to the Appellant, there are two primary factors that need to be considered to determine if an extension can be granted to the 30-day time limit to file a request for reconsideration. Those two primary factors are:

- is there a reasonable explanation for requesting a longer period of time to ask for a reconsideration; and
- has the Appellant demonstrated she had a continuing intention to ask for a reconsideration.<sup>12</sup>

[46] However, if the Appellant's request was made more than 365 days after the day on which the decision was communicated to her, then two additional factors need to be taken into account. Those factors are:

- whether the Appellant's request for reconsideration has a reasonable chance of success; and
- would any prejudice be caused to the Commission, or another party, by allowing the Appellant a longer period in which to make her reconsideration request.<sup>13</sup>

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<sup>11</sup> I can do this pursuant to subsection 54(1) of the *Department of Employment and Social Development Act*.

<sup>12</sup> Section 1(1) of the *Reconsideration Request Regulations*

<sup>13</sup> Section 1(2) of the *Reconsideration Request Regulations*



[47] I find that I need to consider all four factors since the Appellant's request for reconsideration was made 8 years after the latest decision was communicated to her.<sup>14</sup>

### **Reasonable explanation for the delay**

[48] The Appellant has not provided a reasonable explanation for the delay.

[49] I accept that the Appellant continued trying to contact the Commission all the way up to the end of 2016 to see what was happening on her claim. However, from 2017 to 2022, she says she made no efforts to contact the Commission about her claims and that once she got disability payments in 2017, she no longer had an interest in EI.

[50] I accept the Appellant was struggling with health issues, personal issues, and family issues, and was also struggling with financial issues and all the problems associated with that such as finding places to live and paying for the necessities of life, but I find she has not presented any reasonable explanation for why, for the entire period of 2017 until October 2022, she was unable to call the Commission or file a reconsideration request, or go in person to a Service Canada Centre, to deal with these claims.

[51] The fact she said she went into a Service Canada Centre in 2017 to deal with an unrelated issue<sup>15</sup> and successfully applied for disability, further supports that she would have been able to get in touch with the Commission in some way to deal with these claims at an earlier date, but she just chose not to do so.

### **Continuing intention to request a reconsideration**

[52] The Appellant has not shown a continuing intention to request a reconsideration.

[53] I can accept the Appellant kept calling the Commission until the end of 2016 to see what was going on with her file, but I find that the fact she took no action from 2017

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<sup>14</sup> As noted above I found the Appellant learned about the issue of not having enough hours at the end of January 2014.

<sup>15</sup> GD03-21

to 2022, along with the fact she says she was getting disability so was no longer thinking about EI, or interested in receiving it, shows she did not have a continuing intention to request a reconsideration.

[54] The Appellant says she only filed a reconsideration because she found out she would not be getting as much money from her Canada Pension Plan as she thought due to clawbacks from her disability, so she decided to check in and see what happened with her EI claim, as it might be another source of money.,

[55] I find this further supports that she did not have a continuing intention to file a reconsideration and instead, her intention was only formed when she was looking for alternative sources of money after finding out her pension would not be what she was expecting.

### **Reasonable chance of success**

[56] I find the Appellant would not have a reasonable chance of success on either issue.

[57] There is no evidence to support she would be entitled to further sickness benefits, nor is there evidence to demonstrate she has enough hours to qualify back in 2012, as she said she was short seven hours, and could never get her employer to give her those hours.

[58] The fact she appears to have exhausted her avenues through the CRA to find those missing hours, without any apparent success, further supports she does not have a reasonable chance of success on her reconsideration request.

### **Prejudice to a party**

[59] I find allowing more time for a reconsideration would create prejudice for the Commission.

[60] I find it would create prejudice for the Commission as it would be very difficult for them to verify hours with an employer that may no longer be in business or have any

records from 2012, or earlier, which would be necessary to confirm the Appellant's hours of work.

## **Summary**

[61] So, in summary, the Appellant's request for a reconsideration was late, as it was made more than 30 days after the decisions had been communicated to her.

[62] When the Commission made their decision to not give the Appellant an extension to the 30-day time limit to file a reconsideration request, they did not act judicially because they ignored relevant factors.

[63] This means I am setting aside their decision and making the decision they should have made.

[64] When I consider the four factors under the law that must be met in order to give an extension to the 30-day time limit to file a reconsideration, I find the Appellant meets none of the four factors.

[65] This means I cannot give her an extension to the 30-day time limit in which to file a reconsideration, which means the Commission does not need to reconsider its original decisions.

## Conclusion

[66] The appeal is dismissed.

[67] I find the Appellant's request for reconsideration was made outside the 30-day time limit in which to request a reconsideration.

[68] I find the Commission did not make their decision to deny the Appellant extra time in which to file her reconsideration request judicially, as they failed to consider relevant factors.

[69] In giving the decision the Commission should have given, I find the Appellant does not meet the factors set out in the law, so she cannot be granted an extension to the 30-day time limit in which to request a reconsideration.

[70] This means the Commission does not need to reconsider their original decisions.

Gary Conrad

Member, General Division – Employment Insurance Section