



Citation: *MS v Canada Employment Insurance Commission*, 2023 SST 828

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

Decision

Appellant: M. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (516830) dated August 9, 2022
(issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Teleconference

Hearing date: January 9, 2023

Hearing participants: Appellant

Decision date: March 8, 2023

File number: GE-22-3646

Decision

[1] I'm dismissing the Claimant's appeal. This decision explains why.

[2] The Claimant's reconsideration **request was late**. She waited until June 24, 2022, to request a reconsideration of a decision on her claim dated September 29, 2021.

[3] The Canada Employment Insurance Commission (Commission) **used its "discretionary" powers properly** when it denied her request.

[4] When the Commission uses these powers properly, **I have no authority to intervene**. In other words. I can't make the Commission reconsider its decision.

Overview

[5] The Claimant in this appeal is MS. On October 4, 2020, she began a claim for EI and was paid regular benefits starting on that date.

[6] On September 27, 2021, the Commission retroactively disentitled the Claimant from receiving benefits after finding that she was not available for work while taking a course. It issued a decision letter on September 29, 2021. The decision meant she'd been overpaid benefits. A Notice of Debt was sent on October 2, 2021, followed by monthly statements.

[7] On June 24, 2022, the Claimant requested a reconsideration of the Commission's decision dated September 29, 2021, and the overpayment that it caused.

[8] The Commission says it refused to reconsider the Claimant's reconsideration request since she made her request 266 days late. It says she didn't have a reasonable explanation for being late and didn't show that she'd had a continuing intention to make a request.

[9] The Claimant says being busy is a reasonable reason for her late request since she's a working mother of two children and was taking a demanding course. So, she didn't have time to follow up until after her course ended in June 2022. She argues that she didn't know there was a 30-day deadline. She says she was also dealing with depression at the time.

The issues I must decide

[10] Was the Claimant's reconsideration request late?

[11] If her request was late, did the Commission use its powers properly when it refused to reconsider its decision disentitling her from receiving benefits?

Analysis

[12] You have 30 days to request a reconsideration of a decision the Commission makes on your claim, **starting on the day after** it communicates its decision to you.¹ **It's up to the Commission** to prove that it communicated the decision to you.

[13] The Commission may allow you more time to request a reconsideration if you meet certain conditions.² **But it's up to you** to show that you meet these conditions.

[14] If your request is less than a year late, you must show that you have a **reasonable explanation** for not making your request earlier. You must also show that you had a **continuing intention** to file a request.³ If your request is more than a year late, there are two more conditions: your request must have a reasonable chance of success and the extra time must not prejudice the Commission's interests.⁴

[15] The Claimant's request was less than a year late, so **only the first two conditions apply** to her situation.

What is a discretionary decision?

[16] If your request is late, refusing to reconsider your request is a **discretionary** decision.⁵ When making this type of decision, **the Commission must prove that it used its discretionary power properly.**⁶ This means it must show that it acted in good faith, considered all the relevant factors and ignored any irrelevant ones.⁷

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

² Sections 112(1)(b) and 112(3) of the EI Act and section 1 of the *Reconsideration Request Regulations* (Reconsideration Regulations).

³ Section 1(1) of the Reconsideration Regulations.

⁴ Section 1(2) of the Reconsideration Regulations.

⁵ See *Daley v Canada (Attorney General)*, 2017 FC 297.

⁶ See *Canada (Attorney General) v Gagnon*, 2004 FCA 351.

⁷ See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

[17] I can only replace the Commission's decision with my own decision **if it didn't use its discretionary powers properly.**

[18] The only reconsideration decision that the Commission has made so far is to **refuse to reconsider** its decision disentitling the Claimant from receiving benefits. So, its **refusal to perform a reconsideration is the only issue** before me.

[19] To make my decision, I must first consider the following questions:

- a. Did the Commission **communicate its decision** to the Claimant? When?
- b. Did it explain the **30-day deadline** to request a reconsideration?
- c. **When** did the Claimant make her reconsideration request? Was it late?
- d. Did the Commission **use its powers properly** when refusing her request?

The Commission communicated its decision to the Claimant

[20] The Commission says it first communicated its disentanglement decision to the Claimant verbally on September 27, 2021. It says it told her on this call about the **30-day deadline** to make a reconsideration request. The evidence on file documents this call.

[21] The Commission says it sent the Claimant the decision by regular mail in a letter dated September 29, 2021. The evidence includes this letter.

[22] There's no proof that Canada Post couldn't deliver the letter to the Claimant. In such cases, it returns the letter to the sender marked "undeliverable."

[23] On her reconsideration request, the Claimant didn't say **when** she received the Commission's decision letter. But she didn't deny receiving it. She only argues that she was too busy to deal with it and didn't know about the 30-day deadline.

[24] Based on the above evidence, I find that the Claimant **received** the Commission's decision letter dated September 29, 2021. So, the Commission met its burden of proof to communicate its original decision to the Claimant.⁸

⁸ See *Bartlett v Canada (Attorney General)*, 2012 FCA 230 The Tribunal's Appeal Division says it's not enough for the Commission to convey a decision verbally.

The Claimant got the reconsideration decision by October 12, 2021

[25] I will now look at **when** the Claimant received the Commission's disentitlement decision. The date's important since **the 30-day** period to request a reconsideration **starts on the day after** the Commission communicates a decision to a claimant. So, I must look at when the decision letter reached the Claimant.

[26] The Claimant doesn't remember **when** she got the Commission's decision letter dated September 29, 2021.

[27] The Commission's calculation of the Claimant's delay in requesting a reconsideration is **one element** of how it managed her request.

[28] The Commission says the Claimant's reconsideration request was 266 days late. This number assumes delivery of the initial decision letter in one day, on September 30, 2021. According to that scenario, October 1, 2021, would be **the day after** it communicated its decision to the Claimant. This explains its calculation of a 266-day delay.

[29] I come to a different calculation; I find that the Claimant's delay was **255 days**.

[30] According to Canada Post, delivery of regular mail can take up to 10 days. But since there's no delivery on weekends or public holidays, a letter mailed on September 29, 2021, could have taken more than 10 days. It might only have arrived by October 12, 2021, the day after Thanksgiving Monday fell that year.

[31] So, the date I'm using for when the Claimant got the original decision letter is October 12, 2021. This means that the period of her delay began on the next day, on October 13, 2021. This explains my calculation of a 255-day delay.

The Commission's letter specified a 30-day deadline to appeal

[32] The Commission's evidence shows that it explained the 30-day deadline to the Claimant in two ways. First, verbally over the phone on September 27, 2021, and

second, in writing in a decision letter dated September 29, 2021.

[33] Verbal notification on its own wouldn't be enough to convince me that the Claimant understood the 30-day limit on her reconsideration rights. But I find that the wording in the decision letter is clear about this deadline.

The Commission used its powers properly

[34] I find that the Commission used its discretionary powers properly since it **considered all relevant factors and didn't rely on irrelevant ones.**

[35] I first considered whether the Commission failed to use its powers properly when it miscalculated the length of the Claimant's delay.

[36] **But I'm not making that finding** since the Commission's minor miscalculation doesn't prove that it failed to act in good faith. No-one disputes that the Claimant's reconsideration request was late, whether the delay was 255 or 266 days.

[37] The Claimant says she made no request because of what the Commission told her on the call explaining the disentitlement decision verbally. She says the officer made it seem like there was nothing she could do to change the outcome. So, she only acted after a friend later advised her to make a request.

[38] This suggests a conscious decision **not** to request a reconsideration until June 2022. It contradicts the Claimant's testimony that she wasn't aware of the 30-day deadline to make a request. I've already found that this deadline is explained clearly in the decision letter dated September 29, 2021.

[39] The Claimant argues that she was too busy to file a reconsideration request until her course ended in June 2022. She says this is a reasonable reason for her delay.

[40] I find that the Commission **acted in good faith** and **considered all relevant arguments** before refusing the Claimant's late reconsideration request. There's no evidence that it looked at **irrelevant** factors or acted in bad faith when deciding that

being busy wasn't a reasonable explanation for her delay.

[41] I also find that Commission acted in good faith when it decided that the Claimant showed **no continuing intention** to request a reconsideration. It based this decision on her own statements that she was too busy to act until June 2022. There's no evidence to show a continuing intention to follow up on her claim such as efforts to contact the Commission.

[42] The Claimant now argues that she was suffering from depression during the period of her delay. She says this is a reasonable reason for her delay.

[43] I sympathize with the Claimant's circumstances. But there's nothing in the medical evidence to show that during a period when she was able to take a course, she didn't have the capacity to at least call the Commission to follow up on her claim.

Conclusion

[44] The Claimant's reconsideration request was late.

[45] The Commission acted in good faith. It considered all relevant factors and ignored irrelevant ones when refusing to accept the Claimant's late request. So, it used its discretionary powers properly.

[46] That's why I have no power to intervene to change its decision.

[47] This explains why I must dismiss the Claimant's appeal.

Lilian Klein

Member, General Division – Employment Insurance Section