



Citation: *LL v Canada Employment Insurance Commission*, 2023 SST 897

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: L. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (544573) dated October 4, 2022 (issued by Service Canada)

Tribunal member: John Rattray

Type of hearing: Teleconference

Hearing date: February 28, 2023

Hearing participant: Appellant

Decision date: March 14, 2023

File number: GE-22-3719

Decision

[1] The appeal is dismissed.

[2] I find that the Appellant's reconsideration request was late. I also find that the Canada Employment Insurance Commission (Commission) made its decision fairly when it refused to give the Appellant more time to ask it to reconsider. This means that the Commission doesn't have to reconsider its original decision.

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits in November 2021.

[4] On February 15, 2022, the Commission told the Appellant that her claim was denied because she took a voluntary leave of absence without just cause.

[5] An amended Record of Employment (ROE) was issued on March 24, 2022. The Appellant thought the Commission would review her denied claim using the amended ROE. She says that her claim (the one based on the amended ROE) was denied without explanation on August 17, 2022.

[6] On September 2, 2022, the Appellant asked the Commission to reconsider its decision.

[7] Normally, you must ask the Commission to reconsider a decision within 30 days of when you received the decision. The Appellant didn't ask it to reconsider its February decision until more than 6 months later.

[8] The Commission decided not to give the Appellant more time to ask it to reconsider because she didn't have a reasonable explanation for asking late. She also hasn't shown that she always meant to dispute the decision.

Matter I have to consider first

[9] Sometimes the Tribunal sends a claimant's former employer a letter asking whether it wants to be added as a party to the appeal.

[10] In this case, the Tribunal sent the Appellant's employer such a letter. The employer didn't reply to the letter.

[11] To be an added party, the employer must have a direct interest in the appeal. I have decided not to add the employer as a party to this appeal, as there is nothing in my file that suggests that my decision would impose any legal obligations on the employer.

Issues

[12] I have to decide whether the Commission should accept the Appellant's reconsideration request. To make this decision, I have to consider several questions.

[13] First, I must decide whether the Appellant's reconsideration request was late.

[14] Then, I must decide whether the Commission made its decision fairly when it refused to accept her request to reconsider.

[15] If I decide that the Commission didn't make its decision fairly, then I can look at all the factors described by the law. This will allow me to make my own decision about whether the Commission should accept the Appellant's request to reconsider

Analysis

[16] When the Commission makes a decision about your EI benefits, you have 30 days to ask it to reconsider its decision. This is called a reconsideration request.¹

¹ See section 112(1) of the *Employment Insurance Act*.

[17] If you wait more than 30 days to ask it to reconsider, your request is late. The Commission has to decide whether it will accept your late reconsideration request.

[18] The Commission has to tell you what it decides about your claim. The Commission has to prove that you received this information.²

[19] The Commission may decide to give you more time to ask it to reconsider. When it looks at a late reconsideration request, the Commission has to ask two questions:

- Do you have a reasonable explanation for being late?
- Have you shown that you always meant to ask it to reconsider?³

[20] The Commission has the discretion to give you more time to make your request.⁴ Even though it has this discretion, it has to make its decision fairly.⁵ The Commission has to look at all of the information when it makes a decision. This means that the Commission has to consider all of the relevant information about why you were late, and ignore things that aren't relevant.⁶

[21] I must respect the Commission's discretionary decision. This means that I can't change the Commission's decision unless I think it didn't make the decision fairly. If I think the Commission didn't make its decision fairly, then I can step into its role and make the decision whether to give you more time to ask it to reconsider.

Was the Appellant's reconsideration request late?

[22] Yes, the Appellant's reconsideration request was late.

² *Bartlett v. Canada (Attorney General)*, 2012 FCA 230.

³ See section 1(1) of the *Reconsideration Request Regulations*. The Commission must consider whether a claimant has a reasonable explanation for the delay and whether the claimant demonstrated a continuing intention to request a reconsideration.

⁴ *Daley v Canada (Attorney General)*, 2017 FC 297.

⁵ The law refers to this as the Commission exercising its discretion judicially.

⁶ See *Canada (Attorney General) v Purcell*, A-694-94. In this case, the Federal Court of Appeal says that the Commission must consider all relevant factors, ignore irrelevant factors, act in good faith, and act in a manner that is not discriminatory.

[23] I find that the Appellant was told about the decision on February 15, 2022, and received the decision letter by February 23, 2022. The Appellant says that, on February 15, 2022, the Commission told her she was denied benefits. She says that she received the February 16, 2022, decision letter within a couple of days and may also have received it by email.

[24] She says that she prepared her reconsideration request on August 26, 2022. The Commission received the reconsideration request on September 2, 2022.⁷ I see no evidence to contradict this, so I accept it as fact that she asked the Commission to reconsider on September 2, 2022.

[25] The Appellant also says that she expected her claim would be reviewed with the new information from her amended ROE. She says that her claim was denied again on August 17, 2022, with no explanation or decision letter being issued about her amended ROE.⁸

[26] The Commission says that no decision has been made on the Appellant's amended ROE.⁹

[27] I find that my jurisdiction is restricted to the Commission's October 4, 2022, decision about the February 16, 2022, decision. I don't have to determine whether a decision was made about the Appellant's amended ROE on August 17, 2022.

[28] I find that the Appellant received the Commission's decision by February 23, 2022. The Appellant asked it to reconsider its decision on September 2, 2022. She asked the Commission to reconsider more than 30 days after she received the decision. The reconsideration request was late.

⁷ See GD3-20 and GD3-21.

⁸ See GD3-20 and GD3-21.

⁹ See GD3-22.

Did the Commission make its decision fairly?

[29] Yes, the Commission made its decision fairly. It considered all of the relevant information when it made its decision not to give the Appellant more time to ask it to reconsider.

[30] The Appellant applied for EI benefits on November 8, 2021.

[31] On February 15, 2022, the Commission contacted the Appellant. It told her she wasn't eligible for benefits because she stopped working by voluntarily taking leave from her job. The Commission explained the facts on which the decision was based.

[32] The Appellant says that at that time she had no new facts to tell it and no questions.

[33] She says that the Commission told her she had 30 days to ask it to reconsider its decision.

[34] The Commission sent a letter to the Appellant on February 16, 2022, confirming the decision. The letter asked her to immediately send any documents and/or information she hadn't already given to the Commission.

[35] The Commission's letter also told the Appellant that, if she already provided all relevant information and still disagrees with the decision, she has 30 days from the date of the letter to formally ask it to reconsider.¹⁰ The Appellant didn't ask in time.

[36] On September 2, 2022, the Appellant asked the Commission to reconsider its decision about her eligibility for benefits. Her written request was about an oral decision based on her amended ROE that she says she was told about on August 17, 2022.

[37] Before deciding whether to give more time, the Commission spoke with the Appellant about her reconsideration request.

¹⁰ See GD3-17.

[38] The Appellant told the Commission that she received an amended ROE. That ROE gave a different reason for her leaving her job and was issued March 24, 2022. She says that she had been waiting several months for her claim to be reviewed based on the amended ROE. She says that the Commission denied her claim on August 17, 2022, with no explanation or decision letter.¹¹

[39] She says that the Commission told her that no decision had been made about her amended ROE. The Commission confirmed that the Appellant was asking it to reconsider the February 16, 2022, decision that denied her benefits.

[40] The Commission looked at all the information that the Appellant gave as to why her reconsideration request was late. It decided she hadn't provided a reasonable explanation for the delay to ask it to reconsider the February 16, 2022, decision. The Commission also decided that she hadn't shown a continuing intention to ask it to reconsider.

[41] I find that the Commission's record of decision supports that it considered all the relevant information when it made its decision.¹² It correctly identified the two factors that it had to consider in deciding whether to allow the Appellant more time to ask the Commission to reconsider. The Commission looked at whether she had a reasonable explanation for being late. It also looked at whether she showed that she always meant to ask it to reconsider.

[42] The Appellant says that she didn't need it to reconsider before getting her amended ROE. The Commission decided that she hadn't provided a reasonable explanation for being late. That was because she said her reason for the delay was that she didn't want it to reconsider the decision at that time.

[43] The Commission also decided that the Appellant hadn't shown a continuing intention throughout the entire delay. She says that she had called a few times in April, June, July, and August about her amended ROE. There was no evidence of a

¹¹ See GD3-20.

¹² See GD3-23 and GD3-24.

continuing intention to ask the Commission to reconsider its February 16, 2022, decision.

Conclusion

[44] I find that the Commission made its decision fairly when it refused to give the Appellant more time to ask it to reconsider. I find that I cannot change the Commission's decision.

[45] The appeal is dismissed.

John Rattray
Member, General Division – Employment Insurance Section