



Citation: *DG v Canada Employment Insurance Commission*, 2023 SST 1036

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: D. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission notice of decisions (555466 and 560082) dated November 29, 2022 (issued by Service Canada)

Tribunal member: John Rattray

Type of hearing: Teleconference

Hearing date: April 13, 2023

Hearing participant: Appellant

Decision date: April 28, 2023

File numbers: GE-23-16 and GE-23-17

Decision

[1] The appeals are 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 decisions.

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits in February 2022, after being placed on unpaid leave on November 2, 2021.

[4] On April 28, 2022, the Commission told the Appellant that:

- His claim could not be antedated, in other words backdated to November 2, 2021, because he didn't prove that he had good cause to apply late for benefits.
- He was disqualified from being paid benefits beginning January 30, 2022, because he lost his employment as a result of misconduct.
- He was disentitled to benefits because he had not proven his availability.

[5] On November 1, 2022, the Appellant asked the Commission to reconsider its decisions of April 28, 2022.

[6] Normally, you must ask the Commission to reconsider a decision within 30 days of when the decision is communicated to you. The Appellant didn't ask it to reconsider its April 28, 2022, decisions until more than 6 months later.

[7] The Commission decided not to give the Appellant more time to ask it to reconsider because he didn't have a reasonable explanation for asking late. It also says he hasn't shown that he always meant to ask for a reconsideration.

Matters I have to consider first

[8] On April 28, 2022, the Commission made decisions which dealt with three issues: the antedating of his claim, his alleged misconduct, and his availability.

[9] The Appellant made a request for reconsideration of these three decisions on November 1, 2022.

[10] The Commission created two records: one to deal with the antedate issue; and a second to deal with the issues of misconduct and availability. It issued one Notice of Decision on November 29, 2022, saying that it won't reconsider its decisions dated April 28, 2022.

[11] The Appellant's appeal to the Tribunal resulted in the opening of two files because there were two records. I have decided to deal with files GE-23-16 and GE-23-17 together because the appeals raise a common question, and joining the appeals isn't unfair to the parties.¹

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 his request to reconsider.

[15] If I decide that the Commission didn't make its decision fairly, then I can stand in place of the Commission and make the decision that they should have made.

¹ See *Social Security Tribunal Rules of Procedure*, rule 35.

Analysis

[16] When the Commission makes a decision about your EI benefits, you have 30 days from when the decision is communicated to you to ask it to reconsider its decision. This is called a reconsideration request.²

[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.³ The law doesn't require that it be communicated in a specific format.⁴

[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?⁵

[20] Even though it has the discretion to give you more time to request a reconsideration, it has to make its decision fairly.⁶ 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 your late reconsideration request and ignore things that aren't relevant.⁷

² See section 112(1) of the *Employment Insurance Act* (Act).

³ *Bartlett v Canada (Attorney General)*, 2012 FCA 230.

⁴ See section 112(1) of the Act.

⁵ 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.

⁶ *Daley v Canada (Attorney General)*, 2017 FC 297. The law refers to this as the Commission exercising its discretion judicially.

⁷ 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 isn't discriminatory.

[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 a claimant more time to ask it to reconsider.

Was the Appellant's reconsideration request late?

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

[23] I find that the Commission told the Appellant about the decisions on April 28, 2022, during a telephone call because the Appellant says it told him that day.

[24] The Commission says that during the telephone call:⁸

- It told the Appellant about the decisions on his claim and the right to request a reconsideration.
- It offered to explain the reasoning behind the decisions and the Appellant refused.
- The Appellant asked and it told him how to make a request for reconsideration.
- He said he had no more questions and nothing else to say.

[25] The Appellant says that the Commission told him about the decisions, his right to request a reconsideration, and started listing reasons for its decisions. It sounded like a prepared script that didn't consider his circumstances. He didn't "refuse" the Commission's offer to explain the reasons, but since he had heard them before, and didn't agree with them, he didn't want to hear them again.

⁸ See GD6-3 in file GE-23-17.

[26] He also says that he told the agent to go ahead and mail me what you have to mail me. He had no further information or documents to provide, and no further questions or comments for the agent.

[27] I find that the Commission communicated the decisions to the Appellant on April 28, 2022, for the reasons set out above.

[28] I find that the Appellant asked the Commission to reconsider its decision on November 1, 2022.⁹ He asked the Commission to reconsider more than 30 days after he received the decision. The reconsideration request was late.

Did the Commission make its decision fairly?

[29] Yes, the Commission made its decision fairly. When it made its decision to not give the Appellant more time to ask it to reconsider it considered all of the relevant information. It didn't consider irrelevant information.

[30] It says it also sent a letter to him on April 28, 2022 (April letter).¹⁰ The April letter was sent by regular mail to the Appellant's home address and Canada Post didn't return it to the Commission as undeliverable.¹¹ However, the Appellant says the April letter didn't arrive. I find the issue of whether and when the April letter was delivered isn't relevant to the question of whether the Commission made its decision fairly. I find this because the Commission's decision wasn't based on the delivery of the April letter, but on the verbal communication of the decisions.¹²

[31] Before deciding whether to give more time, the Commission unsuccessfully tried to speak with the Appellant about his reconsideration request. It left messages at the Appellant's contact number and sent an email.¹³ The Appellant says that Service

⁹ See GD3-28 to GD3-40.

¹⁰ See GD3-25 and GED3-26.

¹¹ See GD4-1.

¹² The April 28, 2022, letter also says that claimants have 30 days from the date of the letter or the date they were verbally notified of the decisions, whichever occurred first. See GD3-26.

¹³ See GD3-42.

Canada had all the information it required from his written reconsideration request and he didn't need to speak with them.

[32] The Appellant says his reconsideration request was late because:¹⁴

- The Commission said it would mail him a letter about the decisions, including instructions about how to make a reconsideration request.
- The Commission said it could not send the decision to him by email.¹⁵
- He was waiting on the April letter as the “trigger” for making a reconsideration request.
- He didn't know how to proceed to make a reconsideration request.
- He tried to reach the Commission to get a copy of the letter without success until September 29, 2022.
- He didn't receive the April letter until October 2022.
- When he received the April letter, he followed the instructions.

[33] He sent his reconsideration request to the Commission on November 1, 2022.¹⁶

[34] The Commission looked at all the information that the Appellant gave as to why his reconsideration request was late. It decided he hadn't provided a reasonable explanation for the delay to ask it to reconsider the April 28, 2022, decisions. The Commission also decided that he hadn't shown a continuing intention to ask it to reconsider.

¹⁴ See GD3-28. The reconsideration request also says that the Commission failed to advise him about the availability decision, but at the hearing the Appellant said he was told the decisions.

¹⁵ See GD11-1. The Commission agrees that it could not send decisions by email.

¹⁶ See GD3-28 to GD3-40.

[35] I find that the Commission considered all relevant information when it made its decision.¹⁷ 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:

- did he have a reasonable explanation for being late
- did he show that he always meant to ask it to reconsider

[36] For the reasons set out above I find that the Commission told him about the decisions and his right to request a reconsideration on April 28, 2022. The 30 day deadline to request a reconsideration began when it verbally communicated the decisions. It didn't begin when the Appellant received the April letter in October 2022.

[37] However, the Commission and the Appellant disagree on whether he was told how to make a reconsideration request. He says he asked how to do it and was told the instructions will be in the letter which he will get by mail or through a My Service Canada Account (MSCA) which he didn't have. The Commission says it told him how to make a request for reconsideration. I find the evidence of the Commission more credible because:

- The notes of its telephone discussion with the Appellant were made on the date of the call.
- The Appellant made no notes or records of this call.
- The letter doesn't tell him how to make a reconsideration request.
- It directs claimants to go to an employment insurance website, call Service Canada, or visit a Service Canada Centre.¹⁸

¹⁷ See GD3-43.

¹⁸ See GD3-26.

- The Appellant relies on his recollections, and he made inconsistent statements during his testimony.¹⁹

[38] The Commission considered the Appellant's difficulties in calling to get a copy of the April letter. It says that claimants can get copies of letters by²⁰:

- calling in
- requesting by mail
- going to a Service Canada office
- using the MSCA

[39] It says the Appellant had been able to reach Service Canada by phone to request claim status reports prior to April 28, 2022. In the hearing, the Appellant confirmed that prior to April 28, 2022, even if it took multiple calls, he successfully called into Service Canada weekly. He was able to obtain status updates weekly.

[40] The Commission also says that the Appellant could easily find the request for reconsideration form through the MSCA or the internet.²¹

[41] In the hearing the Appellant said that he:

- was waiting on the April letter because the Commission said it would send it
- didn't access the April letter through the MSCA because of privacy concerns
- didn't think of writing to request a copy of the April letter
- didn't know where to send a letter to ask for a copy

¹⁹ For example, during the hearing the Appellant said he looked on the internet for the reconsideration forms, and that he could not find them. Later in the hearing he said he didn't look for the reconsideration forms because he wasn't told to.

²⁰ See GD6-2 in file GE-23-17.

²¹ See GD3-43.

- thought no one was listening
- could not find instructions about how to make a reconsideration request by looking on the Commission website
- could not find the reconsideration form by looking on-line
- didn't look for the reconsideration form because he didn't know he had to because he wasn't told he had to download the form when he spoke with the Commission
- could not go into a Service Canada office because he was unvaccinated, and its offices were closed

[42] I accept the Appellant's decision to not register for the MSCA because of his personal privacy concerns. However, I find that the Appellant didn't give a credible explanation why he could not write to request a copy of the April letter, or obtain instructions on how to request a reconsideration by looking on-line. I find this because he had successfully completed the on-line application for EI benefits which lists multiple resources for claimants, including instructions on how to send mail to the Commission.²²

[43] I also find he didn't give a credible explanation why he could not go into a Service Canada office to get more information about how to make a reconsideration request or request a copy of the April letter. I find this because he said he could not go to an office because they were closed, but the Commission confirmed its offices began to reopen more than 21 months before April 28, 2022.²³ I also find this because while saying he could not go into a Service Canada centre due to his unvaccinated status, he says he was available to work as a firefighter.

[44] The Commission also decided that the Appellant hadn't shown a continuing intention throughout the entire delay. At the hearing he said when he hadn't received the April letter by mid May he tried to reach Service Canada by phone. He said he

²² See GD3-19 to GD3-21.

²³ See GD11-1. The Commission says that its offices began reopening on July 7, 2020.

called for several days without success, then he called in every few weeks, or monthly to follow up. The frequency of his attempts to reach the Commission declined significantly. He didn't write or go to a Service Canada Centre to request a copy of the April letter, or get information about how to make a request for reconsideration. I find that the limited frequency and scope of his attempts to reach the Commission doesn't demonstrate a continuing intention to ask the Commission to reconsider its April 28, 2022, decision.

[45] Unless there are exceptional circumstances, a claimant is expected to take reasonably prompt steps to understand their rights and obligations under the *Employment Insurance Act* (Act).²⁴ Ignorance of the law, even coupled with good faith, isn't sufficient to establish good cause for delay.²⁵ For the reasons set out above, I do not find that there were exceptional circumstances that prevented the Appellant from taking prompt steps to understand his rights and obligations under the Act.

[46] At the hearing, I asked the Appellant to provide his views on how the Commission exercised its discretionary power. He said it wasn't fair that:

- he didn't get the April letter Service Canada said it would send
- there were delays in getting through to Service Canada
- Service Canada didn't document the number of times he tried to call
- he could not leave a message for Service Canada
- he would have to "start from scratch" when he did get through
- Service Canada didn't send the April letter by registered mail

²⁴ See *Canada (AG) v Somwaru*, 2010 FCA 336.

²⁵ See *Canada (AG) v Kaler*, 2011 FCA 266.

[47] The Appellant also says the Commission`s decisions against him were predetermined by the government because of his decision to not receive the COVID-19 vaccine. He offered no evidence in support of this argument.

[48] I find that the Commission considered the Appellant`s explanation for being late, and whether he showed that he always meant to ask it to reconsider. It considered:

- when it told the Appellant about the decisions and how to make a request for reconsideration
- that the Appellant says he didn't receive the original April letter
- when the Appellant requested a copy of the April letter
- the options available to request a copy of the April letter
- the ability of the Appellant to reach the Commission by telephone
- the options available to get information about how to make a request for reconsideration and obtain a request for reconsideration form
- whether the Appellant demonstrated a continuing intention to request a reconsideration

Conclusion

[49] For the reasons above, 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.

[50] The appeals are dismissed.

John Rattray
Member, General Division – Employment Insurance Section