



[TRANSLATION]

Citation: *BM v Canada Employment Insurance Commission*, 2023 SST 1344

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

Decision

Appellant: B. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision dated February 3, 2023 (issued by Service Canada)

Tribunal member: Guillaume Brien

Decision date: May 2, 2023

File number: GE-23-862

Decision

[1] The request for an extension of time is denied. The Tribunal disagrees with the Claimant.

Overview

[2] The Claimant applied for Employment Insurance (EI) regular benefits on June 23, 2020.¹

[3] On July 21, 2020, the Commission made a negative decision. The Claimant wasn't entitled to EI special or regular benefits, since he had 0 hours of insurable employment between June 16, 2019, and June 27, 2020. He needed 420 hours of insurable employment to qualify.

[4] In its denial letter, the Commission told the Claimant that he had 30 days to ask it to reconsider its decision.²

[5] The Commission received the reconsideration request on September 28, 2022.³ This means 799 days—or 2 years, 2 months, and 7 days—had passed. However, the statutory period to request a reconsideration was 30 days, as stated in the decision letter.

[6] In support of his reconsideration request, the Claimant alleged as follows:

- He had just realized that he was entitled to the CERB.⁴
- The Commission's calculation was made on the basis of the last 12 months before the date of the claim, when, in his case, it should have been made on the basis of his 2019 income, which was above \$5,000.⁵

¹ See GD3-3 to GD3-10.

² See GD3-11 and GD3-12.

³ See GD-13 to GD-15 [*sic*].

⁴ See GD3-14.

⁵ See GD3-14.

- He wasn't able to make the request on time because of his wife's illness. She had had chronic major depression for a number of years. In September 2021, he had to quit his job at the Canada Revenue Agency (CRA) to care for her.⁶

[7] The Commission tried to call the Claimant on January 11 and 12, 2023. It also sent him an email on January 12, 2023, asking him to contact it within 5 business days. No response was received by January 19, 2023. The Claimant didn't answer when a third phone call was attempted on January 19, 2023. A letter dated January 19, 2023, was sent to him saying that a decision would be made on the record if he didn't contact the Commission within 10 business days.⁷

[8] On January 23, 2023, the Commission received a voice message from the Claimant. He was in Morocco at the time. He could not be reached at a Canadian number. He would call the Commission back later. He gave the Commission a Moroccan phone number so that it could call him back.⁸

[9] The Commission says that it can't contact telephone numbers outside Canada. By February 2, 2022 [*sic*], the Claimant still hadn't tried to call the Commission back to discuss his case.

[10] Because it was impossible to contact the Claimant, the Commission decided to make a decision on the record on February 3, 2023. It refused to reconsider its decision, since the reasons the Claimant had given to justify the delay of more than two years in filing the reconsideration request didn't meet the requirements of the *Reconsideration Request Regulations*.⁹

[11] The refusal letter told the Claimant that he had 30 days following the receipt of the decision to appeal to the Social Security Tribunal of Canada (Tribunal).

⁶ See GD3-15.

⁷ See GD3-18.

⁸ See GD3-19.

⁹ See GD3-22.

[12] The Claimant was late filing his notice of appeal again. The Tribunal received it at 9:11 p.m. on March 20, 2020 [sic]. The Claimant gave the following reasons for why he was late this time around:

- He said that he didn't request a reconsideration on time because he didn't have new information to support his request.¹⁰
- He said that he didn't receive the letter refusing to reconsider the file until March 8, 2023. He said that he returned from Morocco on the evening of March 7, 2023. He didn't have an opportunity to respond on time.¹¹
- He reiterated that he wasn't able to request a reconsideration on time for the July 2020 denial decision because his spouse was very ill (chronic major depression). In September 2021, he had to resign from the CRA to care for her.¹²

[13] Given that the notice of appeal was filed late, I have to decide whether to accept the late appeal.

Issues

[14] Has the Claimant shown a reasonable explanation for the delay?

[15] Has the Claimant shown a continuing intention to pursue the appeal?

[16] Has the Claimant shown that he has an arguable case?

¹⁰ See GD2-1.

¹¹ See GD2-6.

¹² See GD2-6.

Analysis

Reasonable explanation for the delay

[17] The Claimant's file doesn't show that he has a reasonable explanation for the delay. Instead, the file shows that he was negligent:

- The initial decision to deny benefits is dated July 21, 2020, but it wasn't until September 28, 2022, that he decided to appeal it. The denial letter clearly said that he had 30 days to ask the Commission to reconsider his file.
- He explained the delay of more than two years in requesting a reconsideration by alleging that he had just realized that he was entitled to the CERB. This explanation doesn't show a continuing intention to request a reconsideration from the July 21, 2020, initial decision. It is actually a new fact.
- He said that his spouse was ill and that he had to quit his job at the CRA in September 2021. He didn't provide any medical certificates about the illness. He didn't provide a medical certificate stating that he had to quit his job to care for his spouse. He has failed to prove his allegations on a balance of probabilities.
- The Claimant explained his recent delay in filing his notice of appeal with the Tribunal by saying that he didn't request a reconsideration on time because he didn't have new information to support his request.¹³ Again, this explanation doesn't show a continuing intention to request a reconsideration of his claim.
- The Claimant also explained that he was in Morocco and that he didn't have access to the letter until he returned to Canada. He provided copies of his boarding passes and said that he didn't return until the evening of March 7,

¹³ See GD2-1.

2023. First, the Tribunal notes that the first boarding pass only shows a date of November 23. No year is mentioned. So, the Claimant has failed to prove the amount of time he spent outside Canada. The Tribunal finds that it was several months, regardless of the year. Second, the Claimant said that he was in Morocco to visit his mother-in-law, who was very ill and who died in February. Again, no year is mentioned. The Claimant didn't submit any medical evidence of his mother-in-law's alleged illness. He also didn't submit a death certificate. The Tribunal finds that he hasn't proven that his entire stay in Morocco was justified by his mother-in-law's illness and death. Third, the Claimant, who was out of the country for several months, hasn't shown that he took any reasonable steps to make sure he received his mail during his long absence from Canada. A reasonable person would have acted differently by making sure they received their mail during a several-month absence from the country. To do otherwise is clearly negligent.

[18] After analyzing the file, I find that the Claimant hasn't shown that he has a reasonable explanation for the delay in filing his notice of appeal. He didn't take any reasonable steps to make sure he received his mail during his long absence from Canada. Canadian taxpayers should not have to pay for delays caused by negligent claimants' trips abroad.

Has the Claimant shown a continuing intention to pursue the appeal?

[19] As discussed above, the Claimant hasn't shown a continuing intention to pursue his appeal:

- He explained the delay of more than two years in filing his reconsideration request by saying that he had just realized that he was entitled to the CERB.¹⁴

¹⁴ See GD3-14.

- He explained the delay in filing his notice of appeal by saying that he didn't request a reconsideration on time because he didn't have new information to support his request.¹⁵
- He hasn't shown that he took reasonable steps to make sure he received his mail on time when he left Canada for several months. He was clearly negligent. He hasn't shown a continuing intention to pursue his appeal, accepting that he would read his mail only upon his return to Canada, no matter how important it was.

[20] I find that the Claimant has failed to show, on a balance of probabilities, a continuing intention to pursue his appeal.

Has the Claimant shown that he has an arguable case?

[21] After analyzing the file, I find that the Claimant hasn't shown that he has an arguable case.

[22] The Commission's July 21, 2020, denial decision says that the Claimant wasn't entitled to EI special or regular benefits, since he had 0 hours of insurable employment between June 16, 2019, and June 27, 2020. He needed 420 hours of insurable employment to qualify.¹⁶

[23] The Claimant argues that the Commission's calculation was made on the basis of the last 12 months before the date of the claim, when, in his case, it should have been made on the basis of his 2019 income, which was above \$5,000. He says that this information is verifiable on the government website for the CERB.¹⁷

[24] However, the Claimant wrote that he had to quit his job at the CRA in September 2021 to care for his spouse. He voluntarily left. The law says that a claimant is

¹⁵ See GD2-1.

¹⁶ See GD3-11.

¹⁷ See GD3-14.

disqualified from receiving EI benefits if they voluntarily left their job.¹⁸ The hours accumulated before voluntarily leaving no longer count in calculating hours of insurable employment.

[25] In addition, citing himself the eligibility criteria for the CERB, the Claimant wrote that the fourth criterion is that the claimant hasn't quit their job voluntarily.¹⁹ He wrote that he quit his job at the CRA, which amounts to voluntary leaving under the *Employment Insurance Act*. So, the Claimant doesn't meet one of the four criteria that he himself mentioned.

[26] The Commission was justified in denying EI special and regular benefits on the basis that the Claimant had 0 hours of insurable employment.

[27] In addition, case law from the Federal Court of Appeal indicates that I have no jurisdiction to determine hours of insurable employment.²⁰

[28] After analyzing the file, I find that the Claimant hasn't shown that he has an arguable case on appeal.

Conclusion

[29] The Claimant hasn't shown that he has a reasonable explanation for being late.

[30] He hasn't shown a continuing intention to pursue his appeal.

[31] He hasn't shown that he has an arguable case.

[32] This means that the request for an extension of time is denied.

Guillaume Brien
Member, General Division – Employment Insurance Section

¹⁸ See section 30(1) of the *Employment Insurance Act*.

¹⁹ See GD6-2.

²⁰ See *Banwait v Metropolitan Toronto Police*, 2001 FCA 326 (CA).