



Citation: *SM v Canada Employment Insurance Commission*, 2023 SST 1048

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: S. M.
Appellant's representative R. P.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (556024) dated November 25,
2022 (issued by Service Canada)

Tribunal member: Lilian Klein
Type of hearing: Teleconference
Hearing date: April 27, 2023
Hearing participants: Appellant
Appellant's representative
Decision date: June 8, 2023
File number: GE-22-4160

Decision

[1] The law requires me to **dismiss** the Claimant's appeal. This decision explains why.

[2] The Claimant's made a reconsideration request on November 3, 2022, of a decision on her claim issued on December 21, 2021. **Her request was late.**

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

[4] When the Commission uses these powers properly, **I have no authority to intervene**. In other words, I can't make the Commission change its decision to refuse the Claimant more time to make her reconsideration request.

Overview

[5] The Claimant in this appeal, S. M., is a registered nurse. On November 20, 2021, she applied for EI benefits after her employer dismissed her "without cause."

[6] On December 21, 2021, the Canada Employment Insurance Commission (Commission) disqualified the Claimant from receiving benefits after deciding she'd been dismissed for misconduct under the *Employment Insurance Act* (EI Act).

[7] On October 27, 2022, the Claimant wrote to the Commission to request a reconsideration of that decision. Her letter was filed as a request on November 3, 2022.

[8] The Commission says it refused her reconsideration request since she made it late. It says she didn't have a reasonable explanation for being so late and didn't show she'd had a continuing intention to make a request during the months of her delay.

[9] The Claimant says she'd been emotionally distraught about losing her job and was busy trying to provide for her family. So, it was many months before she noticed that the Commission's misconduct decision didn't match her dismissal "without cause."

[10] My only role is to consider whether the Commission used its discretion properly when it refused her late reconsideration request. I can only intervene if it didn't do this.

The issues I must decide

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

[12] If her reconsideration request was late, did the Commission use its powers properly when it refused to allow the Claimant more time to make her request?

Analysis

[13] You have 30 days to request a reconsideration of a decision the Commission makes on your claim, starting 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.**

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

[15] If your request is less than a year late, there are two conditions. 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 make a request.³ If your request is more than a year late, there are two more conditions: the request must have a reasonable chance of success and the extra time must not prejudice the Commission's interests.⁴

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

Making discretionary decisions

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

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

² See 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 sets out the conditions if your request is under a year late.

⁴ Section 1(2) of the Reconsideration Regulations sets out the conditions if your request is over a year late.

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.

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

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

[20] To make my decision, I considered 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 request? Was it **late**?
- d. Did the Commission **use its powers properly** when refusing her request?

The Commission communicated its decision to the Claimant

[21] The Commission says it first communicated its decision to the Claimant verbally on December 21, 2021. It says it told her on a phone call about the **30-day deadline** to make a reconsideration request. The evidence documents this call.

[22] The Commission says it sent the Claimant the decision and her reconsideration rights by regular mail on December 21, 2021. The evidence includes that letter.

[23] In the letter she wrote to request a reconsideration, the Claimant didn't confirm **when** the Commission communicated its original decision to her verbally or when she received its decision letter. But she doesn't deny having the call or receiving the letter.

[24] So, the Commission met its responsibility to communicate its decision to the Claimant. I'll now look at **when** the Claimant received the Commission's decision.

The Claimant got the reconsideration decision by January 14, 2022

[25] I find that the Claimant received the reconsideration decision by January 14, 2022. 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.**

[26] The evidence shows that the Commission communicated its decision verbally to the Claimant on **December 21, 2021**. But communication over the phone may be unclear. Instructions may be misunderstood. That's one of the reasons why the Tribunal's Appeal Division says the Commission must show that it communicated a decision in writing too.⁸

[27] I find that the Commission communicated its decision to the Claimant **in writing** by **January 14, 2022**. Canada Post says regular mail takes up to 10 days, but I've added another 10 days to cover possible delivery delays during the holiday season.

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

[28] The Commission's evidence shows that it explained the 30-day deadline to the Claimant verbally on December 21, 2021, and in a decision letter dated the same day.

[29] Verbal notification might not be enough to ensure 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. She doesn't dispute this. Her argument is that 30 days isn't enough time for someone in her difficult circumstances to be able to respond.

When did the Claimant make her reconsideration request? Was it late?

[30] The Claimant requested a reconsideration through a letter dated October 27, 2022. The evidence shows that the Commission received her letter on **November 3, 2022**, so that's the date her reconsideration request was filed.

[31] This means that her request was late. The decision was communicated to her by January 14, 2022. So, **the 30-day deadline to make a request was February 14, 2022**.

The Commission used its powers properly

[32] I find that the Commission used its discretionary powers properly when refusing the Claimant's late request since it considered all relevant factors and didn't rely on irrelevant ones. There's no evidence that it acted improperly or in bad faith since it followed the test set out in the law that applies to the length of the Claimant's delay.

⁸ *MV v Canada Employment Insurance Commission*, 2019 SST 2.

[33] I'll now look at **how** the Commission dealt with the following two questions when deciding whether to allow the Claimant more time for her late reconsideration request. These are the **only** questions it had authority to consider when making that decision.

Did the Claimant have a reasonable reason for her delay?

[34] The Claimant says her reason is reasonable. She says she was too shocked and emotionally distraught to investigate the matter any earlier than she did. She had to focus on providing for her family. She says the 30 days allowed under the law isn't enough for someone to process and respond to the shock of being fired and then refused benefits.

[35] The Commission considered the Claimant's statement that she was too distraught to respond earlier. So, it showed that it considered this factor. She's testified further about her emotional state but hasn't mention any other relevant factors that the Commission failed to consider. There's no evidence that it relied on irrelevant factors either.

[36] The Claimant says the Commission failing to consider that her employer fired her "without cause" means that it ignored a relevant factor.

[37] But the **substance** of her challenge of the Commission's misconduct decision **wasn't** relevant to its decision-making on whether she had a reasonable reason for her late reconsideration request. This is what the Commission had to consider at that point.

[38] So, the Commission used its discretion properly when it decided that the Claimant **didn't have a reasonable reason for her late request.**

Did she have a continuing intention to request a reconsideration?

[39] The Claimant says it was only in October 2022 that she realized the Commission had disqualified her for **misconduct** despite her employer dismissing her **without cause**. So, that's when she wrote to the Commission to request a reconsideration.

[40] The Commission considered this explanation when it decided that Claimant didn't have a **continuing intention** to ask for a reconsideration since she taken no action towards making a request during the period of her delay.

[41] I find that the Commission didn't ignore relevant evidence when coming to this conclusion since there is no such evidence. The Claimant hadn't shown she'd done anything during the months of her delay that demonstrated a **continuing intention** to file a request. This could have been shown by efforts to contact the Commission to discuss its decision, consulting a lawyer or seeking more information about EI in cases of dismissal.

[42] So, the Commission used its discretion properly when deciding that the Claimant **didn't show she'd had a continuing intention to request a reconsideration**.

[43] I sympathize with the Claimant's distress over her dismissal after years of dedicated work as a primary care nurse. But I can't change the law.⁹

[44] The Claimant says she's paid into EI for years and it's unfair that the Commission is preventing her from correcting its decision so that she can get her benefits. But, as with all insurance plans, paying into a plan isn't enough. You must also follow all the plan's conditions, including respecting its appeal deadlines.¹⁰

[45] So, there's nothing in the evidence to show that the Commission failed to use its discretion properly when considering the Claimant's late reconsideration request. This means that **I have no power to change the Commission's decision** to refuse the Claimant more time to make her request.

Conclusion

[46] The Claimant's reconsideration request was late. The Commission considered all relevant factors and ignored irrelevant ones when refusing to accept her late request. So, it used its discretionary powers properly. That's why I can't intervene to change its decision.

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

Lilian Klein

Member, General Division – Employment Insurance Section

⁹ See *Attorney General of Canada v Knee*, 2011 FCA 301.

¹⁰ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.