



[TRANSLATION]

Citation: *DJ v Canada Employment Insurance Commission*, 2023 SST 820

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

Decision

Appellant: D. J.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (503146) dated July 23, 2022
(issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Videoconference
Hearing date: April 13, 2023
Hearing participant: Appellant
Decision date: June 2, 2023
File number: GE-22-3003

Decision

[1] The appeal is dismissed. I find that the Canada Employment Insurance Commission (Commission) was justified in refusing to extend the 30-day period to ask for a reconsideration.¹

Overview

[2] On June 10, 2022, the Appellant asked the Commission to reconsider a decision it had made on January 26, 2021.²

[3] On August 17, 2022, the Commission told her that it would not reconsider the January 26, 2021, decision. It said that it had looked at her reasons for her late reconsideration request, but it had found that they didn't meet the requirements of the *Reconsideration Request Regulations*.³

[4] The Commission's January 26, 2021, decision deals with a request to antedate the Appellant's claim for benefits.⁴

[5] The Appellant explains that after getting notices of debt, she asked for a reconsideration on June 10, 2022, to challenge the request to pay back the amount she was overpaid in benefits. As for the Commission's January 26, 2021, decision denying her antedate request, she says that after reading it, she figured that she could not challenge it. She says that around December 2020, she went to a Service Canada Centre to find out whether she could get her claim for benefits antedated; she wanted it to start on March 23, 2020. According to her, the Commission told her that it could not grant her antedate request. Since her antedate request was denied in December 2020, she says she figured that she could not challenge the Commission's January 26, 2021, decision on this issue. She says that she asked for a reconsideration in June 2022 after getting notices of debt asking her to pay back a \$2,000 advance payment of the

¹ See section 112 of the *Employment Insurance Act (Act)* and section 1 of the *Reconsideration Request Regulations*.

² See GD3-15 to GD3-17.

³ See GD2-10 and GD3-22.

⁴ When a late claim for Employment Insurance benefits gets antedated, it is considered as having been made on an earlier day than the day it was actually made. See also GD3-15.

Employment Insurance Emergency Response Benefit (EI ERB). She explains that the appeal she filed with the Tribunal on September 10, 2022, deals with that repayment request.

Preliminary matters

[6] In this case, I consider that the Commission's January 26, 2021, decision deals with a request to antedate the Appellant's claim for benefits to March 23, 2022 [*sic*],⁵ while the purpose of the Appellant's June 10, 2022, reconsideration request was to challenge the request to pay back an amount she was overpaid as an advance payment of the EI ERB (overpayment).

[7] After the hearing on April 13, 2023, and in response to a request from the Tribunal, the Commission explained that the Appellant's June 10, 2022, reconsideration request⁶ showed that she wanted the Commission to reconsider the decision asking her to pay back the \$2,000 EI ERB advance payment.⁷

[8] The Commission acknowledged that the Appellant's reconsideration request for this issue wasn't late and that the decision in question needed to be reconsidered.⁸ It said that it had initially made the decision on May 20, 2022.⁹

[9] Following this acknowledgement, the Commission recommended two solutions to the Tribunal: either reconsider, with the Tribunal's approval, its decision on the issue of paying back the EI ERB advance payment before deciding the issue of antedating the Appellant's claim for benefits, or reconsider after making its decision.¹⁰

[10] On May 18, 2023, after getting the Tribunal's approval, the Commission made a reconsideration decision concerning its May 20, 2022, initial decision about the amount that the Appellant owed for benefits she was overpaid as an advance payment of the

⁵ See GD3-15.

⁶ See form INS5210 (Request for Reconsideration of an Employment Insurance (EI) decision)—GD3-16 and GD3-17.

⁷ See GD8-1.

⁸ See GD8-1.

⁹ See GD11-2.

¹⁰ See GD8-2.

EI ERB.¹¹ In its May 18, 2023, decision, the Commission indicated that it was rescinding the May 20, 2022, decision.¹²

[11] In its arguments, the Commission explains that the Appellant has proven that she was entitled to receive the EI ERB for an additional four weeks, offsetting the \$2,000 advance payment, which is the equivalent of four weeks of benefits (four weeks at \$500 per week).¹³ The Commission says that its May 18, 2023, decision resulted in a write-off of the \$2,000 overpayment that was created after the Appellant was paid an equivalent amount as an advance payment of the EI ERB.¹⁴

[12] With this in mind, my decision deals solely with the request to reconsider the Commission's decision on the request to antedate the Appellant's claim for benefits. I would point out that the Commission's refusal to extend the 30-day period to ask for a reconsideration is in connection with the antedate request.

[13] However, to be clear, my decision doesn't affect the Commission's May 18, 2023, reconsideration decision that resulted in a write-off of the \$2,000 benefit overpayment that the Appellant owed.

Issue

[14] I have to decide whether the Commission was justified in refusing to extend the 30-day period to ask for a reconsideration.¹⁵

Analysis

[15] A claimant or other person who is the subject of a decision of the Commission can ask the Commission, in the prescribed form and manner, to reconsider that decision

¹¹ See GD11-2.

¹² See GD11-2.

¹³ See GD11-1.

¹⁴ See GD11-1.

¹⁵ See section 112 of the Act and section 1 of the *Reconsideration Request Regulations*.

at any time within 30 days after the day the decision is communicated to them, or any further time that the Commission may allow.¹⁶

[16] The Commission can allow a longer period for a reconsideration request if it is satisfied that there is a reasonable explanation for requesting a longer period and the person has shown a continuing intention to ask for a reconsideration.¹⁷

[17] The Commission must also be satisfied that the reconsideration request has a reasonable chance of success, and that no prejudice would be caused to the Commission or a party by allowing a longer period to make the request, in the following “particular circumstances”: the reconsideration request (a) is made after the 365-day period after the day the decision was communicated to the person; (b) is made by a person who submitted another application for benefits after the decision was communicated to the person; or (c) is made by a person who has asked the Commission to rescind or amend the decision under section 111 of the *Employment Insurance Act*.¹⁸

[18] Given the issue raised in this case, I note that my role is limited to determining whether the Commission exercised its discretion judicially when it denied the Appellant an extension of the 30-day period to ask for a reconsideration concerning the request to antedate her claim for benefits.¹⁹

[19] The Federal Court of Appeal (Court) has established the principle that discretionary decisions of the Commission should not be interfered with unless the Commission didn’t exercise its discretion judicially.²⁰

[20] The Court has also defined “judicially” as acting in good faith, taking into account all relevant factors and ignoring any irrelevant factors.²¹

¹⁶ See section 112(1) of the Act.

¹⁷ See section 1(1) of the *Reconsideration Request Regulations*.

¹⁸ See section 1(2) of the *Reconsideration Request Regulations*.

¹⁹ See section 112 of the Act and section 1 of the *Reconsideration Request Regulations*.

²⁰ The Court established or reiterated this principle in the following decisions: *Sirois*, A-600-95; and *Chartier*, A-42-90.

²¹ See the following decisions: *Sirois*, A-600-95; and *Chartier*, A-42-90.

[21] The Federal Court has confirmed that the Commission's decision whether to extend the time to ask for a reconsideration is discretionary.²²

[22] In this case, I find that the Commission has shown that it exercised its discretion judicially when it denied the Appellant an extension of the 30-day period to ask for a reconsideration concerning the request to antedate her claim for benefits.

[23] The Commission argues as follows:

- a) The Appellant was aware of the Commission's January 26, 2021, decision, but waited until June 10, 2022, to ask for a reconsideration.²³
- b) The Appellant hasn't shown that she has a reasonable explanation for her delay or that she had a continuing intention to challenge the decision during the period of the delay.²⁴
- c) The substantive issue had no reasonable chance of success given that the Appellant had until December 2, 2020, to claim the EI ERB and didn't ask for an antedate until January 5, 2021.²⁵
- d) The Commission says that it exercised its discretion "judicially"²⁶ when it refused to extend the 30-day period to ask for a reconsideration of the decision affecting the Appellant, since it considered all the relevant circumstances when it refused her delay in making her request.²⁷
- e) For the Commission to accept a late reconsideration request, the Appellant has to meet the following four conditions: She has to prove that she has a reasonable explanation for her late reconsideration request, that she had a continuing intention to ask for a reconsideration during the period of the delay, that her reconsideration request has a reasonable chance of success, and

²² See the Federal Court decision in *Daley*, 2017 FC 297.

²³ See GD4-3.

²⁴ See GD4-3 and GD4-4.

²⁵ See GD3-20 to GD3-22, GD4-3, and GD8-1.

²⁶ See section 112 of the Act.

²⁷ See GD4-4.

that no prejudice would be caused to the Commission or another party by accepting her late reconsideration request. It isn't enough for her to meet some of these conditions. The Commission doesn't have to accept the late reconsideration request.²⁸

[24] The Appellant's testimony and statements indicate the following:

- a) She explains that she received the Commission's January 26, 2021, decision denying her request for an antedate to have her benefit period start on March 23, 2020.²⁹
- b) Once she read the decision, she figured there was nothing else she could do to get an antedate.
- c) Around December 2020, she went to a Service Canada Centre to find out whether she could get her claim for benefits antedated. A Commission representative told her that she could not get an antedate.
- d) She says that because of this, she figured that she could not challenge the Commission's January 26, 2021, decision on this issue.
- e) Even though the decision said that she had 30 days following its receipt to ask for a reconsideration, in her opinion, she had already done this when she had previously gone to a Service Canada Centre. She figured that she was out of options. The Commission had told her that [translation] "it was too late" to ask for an antedate. She says that she didn't understand the concept of a reconsideration request.
- f) The purpose of her June 10, 2022, reconsideration request was to challenge the request to pay back a \$2,000 advance payment of the EI ERB after she started getting notices of debt in early June 2022.³⁰

²⁸ See GD4-4.

²⁹ See GD3-15.

³⁰ See GD3-16 and GD3-17.

[25] In this case, the evidence shows that the Appellant didn't meet the 30-day deadline to ask the Commission to reconsider its January 26, 2021, decision.

Reasonable explanation

[26] I find that the Appellant hasn't given a reasonable explanation for the delay in asking the Commission to reconsider its January 26, 2021, decision on her request to antedate her claim for benefits.

[27] Despite the Appellant's explanation that she thought she could not ask the Commission to reconsider that decision because it had told her, around December 2020, that it could not grant her antedate request, the fact is that she could ask for a reconsideration.

[28] I find that the Appellant had the opportunity to read the content of the January 26, 2021, decision. It said that she had 30 days to ask for a reconsideration.³¹

[29] In my view, when the Commission made its decision on January 26, 2021, there was nothing stopping the Appellant from asking for a reconsideration within the 30-day time limit.

[30] I agree with the Commission's finding that the Appellant hadn't given a reasonable explanation for the delay in asking for a reconsideration of the January 26, 2021, decision.

Continuing intention to ask for a reconsideration

[31] I find that the Appellant hasn't shown that she had a continuing intention to ask for a reconsideration of the January 26, 2021, decision.

[32] I find that the Appellant had the opportunity to ask for a reconsideration of the decision but chose not to take advantage of it.

³¹ See GD3-15.

[33] The January 26, 2021, decision told the Appellant that she had 30 days following the date of the decision to ask for a reconsideration.³²

[34] According to the Appellant's testimony, her intention in asking for a reconsideration in June 2022 wasn't to challenge the Commission's refusal to antedate her claim for benefits, but to challenge the request to pay back a \$2,000 advance payment of the EI ERB.

[35] I find that the Commission correctly determined that the Appellant hadn't shown a continuing intention to ask for a reconsideration of its January 26, 2021, decision.

Reasonable chance of success and potential prejudice to the parties

[36] In its arguments, the Commission explains that the substantive issue—antedating the Appellant's claim for benefits—had no reasonable chance of success.³³ It says that the Appellant had until December 2, 2020, to claim the EI ERB but didn't ask for an antedate until January 2021.³⁴

[37] At the hearing, the Appellant didn't provide any evidence to support that her reconsideration request had a reasonable chance of success on the issue mentioned in the Commission's January 26, 2021, decision.

[38] Instead, the Appellant's explanations show that her reconsideration request was about the request to pay back the EI ERB advance payment.

[39] The Appellant also hasn't made any arguments about the potential prejudice to the Commission or another party in accepting her reconsideration request.

The Commission's discretion

[40] I am of the view that the Commission exercised its discretion judicially when it denied the Appellant an extension of the 30-day period to ask for a reconsideration,

³² See GD3-15.

³³ See GD4-3.

³⁴ See GD3-20 to GD3-22, GD4-3, and GD8-1.

since it considered all the relevant circumstances when it refused her delay in making her request.

[41] I find that in making its decision, the Commission took into account all relevant factors and ignored any irrelevant factors.

[42] These factors refer to the following: the lack of a reasonable explanation from the Appellant for the delay in asking for a reconsideration and the fact that she didn't have a continuing intention to ask for a reconsideration.

[43] I also find that the Appellant hasn't shown that the Commission relied on irrelevant factors in refusing to extend the 30-day period to ask for a reconsideration.

[44] I find that the Commission exercised its discretion judicially when it denied the Appellant an extension of time to ask for a reconsideration.

Conclusion

[45] I find that the Commission was justified in refusing to extend the 30-day period to ask for a reconsideration concerning the request to antedate the Appellant's claim for benefits.

[46] To be clear, that refusal doesn't concern the Commission's May 18, 2023, reconsideration decision dealing with the advance payment of the EI ERB to the Appellant and the resulting overpayment.

[47] This means that the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section