



[TRANSLATION]

Citation: *RB v Canada Employment Insurance Commission*, 2023 SST 524

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

Decision

Appellant: R. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission decision (519402) dated September 13, 2022 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: March 28, 2023
Hearing participant: Appellant
Decision date: May 5, 2023
File number: GE-22-4038

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 29, 2022, the Appellant asked the Commission to reconsider a decision it had made on January 8, 2022.²

[3] On September 13, 2022, the Commission told him it would not reconsider the January 8, 2022, decision. It said that it had looked at his reasons for his late reconsideration request, but it had found that they didn't meet the requirements of the *Reconsideration Request Regulations* (Regulations).³

[4] The Commission's January 8, 2022, decision deals with the Appellant's disqualification from receiving benefits from October 31, 2021, for voluntarily leaving his job with the employer X on October 29, 2021, without good cause under the *Employment Insurance Act* (Act).⁴

[5] On September 27, 2022, the Appellant made another reconsideration request related to an amount he owed for benefits he was overpaid (notice of debt for a benefit overpayment).⁵

[6] On November 16, 2022, the Commission told him it could not act on his September 27, 2022, reconsideration request because it had already made a decision on this issue, on September 13, 2022.⁶

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

² See GD2-15, GD3-11, GD3-12, GD3-15, GD3-16, and GD5-2.

³ See GD3-20.

⁴ See GD2-15, GD3-11, and GD3-12.

⁵ See GD2-10.

⁶ See GD2-11.

[7] The Appellant explains that he asked for a reconsideration of the Commission’s decision on June 29, 2022—after the deadline—because he disagrees with the decision asking him to pay back an amount he was overpaid in benefits (overpayment). He says the purpose of his June 29, 2022, reconsideration request was to challenge the repayment request after he received the notice of debt on June 11, 2022. The Appellant says his reconsideration request isn’t meant to challenge the Commission’s January 8, 2022, decision that his voluntary leaving on October 29, 2021, wasn’t justified under the Act. He says he didn’t receive benefits after voluntarily leaving his job. On December 5, 2022, the Appellant challenged the Commission’s September 13, 2022, decision before the Tribunal. That decision is being appealed to the Tribunal.

Issue

[8] I have to decide whether the Commission was justified in refusing to extend the 30-day period to ask for a reconsideration.⁷

Analysis

[9] 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 at any time within 30 days after the day the decision is communicated to them, or any further time that the Commission may allow.⁸

[10] 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.⁹

[11] 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

⁷ See section 112 of the Act and section 1 of the Regulations.

⁸ See section 112(1) of the Act.

⁹ See section 1 of the Regulations.

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 Act.¹⁰

[12] 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.¹¹

[13] 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.¹²

[14] The Court has also defined "judicially" as acting in good faith, taking into account all relevant factors and ignoring any irrelevant factors.¹³

[15] The Federal Court has confirmed that the Commission's decision whether to extend the time to ask for a reconsideration is discretionary.¹⁴

[16] 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.

[17] The Commission argues as follows:

- a) When assessing whether to allow a longer period to ask for a reconsideration, the Commission says it considers the following requirements of the Regulations: It must be satisfied that there is a reasonable explanation for

¹⁰ See section 1(2) of the Regulations.

¹¹ See section 112 of the Act and section 1 of the Regulations.

¹² The Court established or reiterated this principle in the following decisions: *Sirois*, A-600-95; and *Chartier*, A-42-90.

¹³ See the Court's decisions in *Sirois*, A-600-95; and *Chartier*, A-42-90.

¹⁴ See the Federal Court decision in *Daley*, 2017 FC 297.

- requesting a longer period and that the person (Appellant) has demonstrated a continuing intention to ask for a reconsideration.¹⁵
- b) None of the circumstances set out in sections 1(2)(a), 1(2)(b), and 1(2)(c) of the Regulations are present in the Appellant's case.¹⁶
 - c) The Appellant was aware of the Commission's January 8, 2022, decision, and he waited until June 29, 2022, to ask for a reconsideration. This was 142 days after the deadline to ask for a reconsideration.¹⁷
 - d) The Appellant hasn't given a good reason for his delay in asking for a reconsideration. He doesn't meet the requirements of section 1(1) of the Regulations in this regard.¹⁸
 - e) The facts of the case show that the Appellant didn't ask for a reconsideration, despite the fact that he went to a Service Canada Centre several times about an overpayment in his file, resulting from a dispute other than the one concerning his voluntary leaving on October 29, 2021.¹⁹
 - f) The Appellant agrees that he didn't ask for a reconsideration on time because he was waiting for an Employment Insurance decision about an overpayment in his file.²⁰
 - g) He says he doesn't dispute the decision that he didn't have just cause for voluntarily leaving.²¹ This decision caused the benefit overpayment he is being asked to pay back. Whether the Appellant is challenging the decision about his voluntary leaving or the benefit overpayment he is being asked to

¹⁵ See section 1(1) of the Regulations. See also GD4-2.

¹⁶ See GD4-2.

¹⁷ See GD4-2 and GD4-4.

¹⁸ See GD4-3.

¹⁹ See GD4-2 and GD4-3.

²⁰ See GD3-17 and GD4-3.

²¹ See GD3-17.

pay back, he doesn't meet the requirements of section 1(1) of the Regulations.²²

- h) There was nothing preventing him from meeting those requirements. He was waiting for another dispute to be resolved.²³
- i) In his notice of appeal, the Appellant provided documents concerning a benefit overpayment related to a dispute other than the one related to his voluntary leaving.²⁴
- j) In response to the Appellant's statement that he should not have to pay back \$3,438 in benefits he was overpaid because he didn't receive the benefits in question, the Commission says he received benefits for five weeks, over the period from October 31, 2021, to December 11, 2021. These benefits amount to \$3,438.00. This amount was directly deposited into his bank account on March 25, 2022.²⁵
- k) The Appellant's reasons for his delay can't be considered good cause under the Act.²⁶
- l) The Commission says it exercised its discretion judicially when it denied the Appellant an extension of the 30-day period to ask for a reconsideration, since it considered all the relevant circumstances when it refused that request.²⁷

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

- a) He received the Commission's January 8, 2022, decision telling him that he wasn't entitled to benefits from October 31, 2021, because he had voluntarily

²² See GD4-1 and GD4-3

²³ See GD4-3.

²⁴ See GD2-18, 19, and 3.

²⁵ See GD4-4.

²⁶ See GD4-4.

²⁷ See section 112 of the Act. See also GD4-3 and 4.

- left his job with the employer X on October 29, 2021, without good cause under the Act.²⁸
- b) He doesn't dispute the Commission's January 8, 2022, decision about his voluntary leaving. He says he accepted that decision.²⁹
 - c) The purpose of his June 29, 2022, reconsideration request, is to challenge the Commission's decision asking him to pay back an amount he was overpaid in benefits (overpayment) after he received a notice of debt on June 11, 2022.³⁰
 - d) In his June 29, 2022, reconsideration request, the Appellant explains that he disagrees with the Commission's January 8, 2022, decision. He says he didn't voluntarily leave his job, but stopped working because of a shortage of work (temporary layoff of all employees).³¹
 - e) In his September 13, 2022, statement to the Commission, the Appellant said he was waiting for an Employment Insurance decision about a benefit overpayment. He went to a Service Canada Centre several times and, on June 29, 2022, he completed a reconsideration request. He says he has no other reason for having waited to make this request.³²
 - f) He says he didn't receive the amount the Commission says he owes for five weeks of overpayments.³³ He didn't receive benefits after he voluntarily left on October 29, 2021, until June 2022. He received a notice from the Commission by mail, dated January 7, 2022, telling him not to complete his claimant reports. He says he worked during the period from January to May 2022.³⁴

²⁸ See GD3-11 and GD3-12.

²⁹ See GD3-17 and GD6-2.

³⁰ See GD2-12, GD3-13, GD3-14, and GD6-2.

³¹ See GD3-15 and GD5-2

³² See GD3-17.

³³ See GD4-4.

³⁴ See GD2-4, GD2-8, and GD2-9.

- g) He says the bank statements he provided show that the Commission didn't pay him the amount it says he owes. He asked how he could have a debt of \$3,438.00 when he hadn't received benefits.³⁵
- h) The Commission made a mistake in his file by asking him to pay back a benefit overpayment.
- i) Part of the amount the Commission asked him to pay back was repaid from deductions from benefits he received from June 2022.³⁶
- j) He asks that the money he repaid be returned to him.³⁷

[19] In this case, the evidence shows that the Appellant didn't meet the 30-day deadline to ask for a reconsideration of the Commission's January 8, 2022, decision.

[20] I note that my decision relates to the Appellant's reconsideration request, dated June 29, 2022,³⁸ and not to his later request dated September 27, 2022.³⁹

[21] The Commission's September 13, 2022, decision refers to the January 8, 2022, decision.⁴⁰ The Commission didn't make a decision on the Appellant's September 27, 2022, reconsideration request. It explained to him that it could not act on it, since it had already made a decision on the issue he was raising.⁴¹

– **Reasonable explanation**

[22] I find that the Appellant hasn't given a reasonable explanation for his delay in asking for a reconsideration of the Commission's January 8, 2022, decision.

[23] I find that the Appellant had the opportunity to read that decision. The decision tells him that he isn't entitled to benefits from October 31, 2021, because he voluntarily

³⁵ See GD2-4, GD2-9, GD2-12 to 14, and GD6-3.

³⁶ See GD2-8.

³⁷ See GD2-9.

³⁸ See GD3-15 and GD5-2.

³⁹ See GD2-10.

⁴⁰ See GD3-20.

⁴¹ See GD2-11.

left his job with the employer X, without good cause under the Act.⁴² In that decision, the Commission told him he had 30 days to ask for a reconsideration.⁴³

[24] I don't accept the Appellant's argument that he was late in asking for a reconsideration because he was waiting for an Employment Insurance decision about a benefit overpayment in his file.⁴⁴

[25] I am of the view that, when the Commission made its decision on January 8, 2022, there was nothing preventing the Appellant from asking for a reconsideration within the 30 days.

[26] I note that, in his September 13, 2022, statement to the Commission, the Appellant said he had no reason for waiting to ask for a reconsideration other than that he was waiting for a decision about a benefit overpayment.⁴⁵

[27] Although the Appellant argues that his June 29, 2022, reconsideration request is about the amount the Commission says he owes for benefits he was overpaid, and not about the issue of his voluntary leaving, the fact is that, in that request, he says he disagrees with the January 8, 2022, decision.⁴⁶

[28] I also note that this decision concerns the Appellant's disqualification from benefits for voluntarily leaving his job on October 29, 2021, without good cause under the Act.⁴⁷

[29] I also note that, in its arguments, the Commission says that the Appellant's disqualification from receiving benefits from October 31, 2021, created the benefit overpayment it is asking him to pay back.⁴⁸

⁴² See GD2-15, GD3-11, and GD3-12.

⁴³ See GD2-15, GD3-11, and GD3-12.

⁴⁴ See GD3-17.

⁴⁵ See GD3-17.

⁴⁶ See GD3-15 and GD5-2.

⁴⁷ See GD2-15, GD3-11, and GD3-12.

⁴⁸ See GD4-1.

[30] In this context, I accept the Commission's explanation that the fact that the Appellant is challenging the decision about his voluntary leaving or the decision about the amount he owes for benefits he was overpaid doesn't change its conclusion.⁴⁹ The Commission says the Appellant doesn't meet the requirements of the Regulations.⁵⁰

[31] Even though the Appellant made another reconsideration request on September 27, 2022, about an amount he owed for benefits he was overpaid,⁵¹ the Commission had already made its decision two weeks earlier, on September 13, 2022, on the June 29, 2022, reconsideration request.⁵²

[32] I find that, after the reasons the Appellant gave the Commission for his delay in asking for a reconsideration, he hasn't provided any new evidence showing that he was unable to do so within the time limit.

[33] I agree with the Commission's finding that the Appellant hasn't given a reasonable explanation for his delay in asking for a reconsideration.

– **Continuing intention to ask for a reconsideration**

[34] I find that the Appellant hasn't shown that he had a continuing intention to ask for a reconsideration of the January 8, 2022, decision.

[35] I find that the Appellant had the opportunity to ask for a reconsideration of that decision but that he chose not to do so within the time limit.

[36] It wasn't until June 29, 2022, that the Appellant showed that he had taken steps to that end.

[37] Although the Appellant says he went to a Service Canada Centre several times, he hasn't shown when he did, or that his goal was to challenge the Commission's decision about his voluntary leaving on October 29, 2021.

⁴⁹ See GD4-3.

⁵⁰ See GD4-3.

⁵¹ See GD2-10.

⁵² See GD3-20.

[38] I note that the Appellant also says he accepted the Commission's January 8, 2022, decision on this matter, even though this is at odds with the explanations he gave in his June 29, 2022, reconsideration request to indicate that he disagreed with that decision.

[39] In the January 8, 2022, decision, the Appellant was told he had 30 days to ask for a reconsideration after the date of that decision.⁵³

[40] It wasn't until June 29, 2022, that he took steps to ask for a reconsideration of that decision.

[41] I find that the Commission correctly assessed that the Appellant didn't meet the requirements set out in the Regulations, which include showing a continuing intention to ask for a reconsideration of its January 8, 2022, decision.

– **Commission's discretion**

[42] 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, since it considered all the relevant circumstances when it refused his request.

[43] I find that, in making its decision, the Commission considered all relevant factors and ignored any irrelevant factors.

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

⁵³ See GD2-15, GD3-11, and GD3-12.

Conclusion

[45] I find that the Commission was justified in refusing to extend the 30-day period to ask for a reconsideration.

[46] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section