



[TRANSLATION]

Citation: *OR v Canada Employment Insurance Commission*, 2023 SST 672

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (565177) dated January 31,
2023 (issued by Service Canada)

Tribunal member: Nathalie Léger
Type of hearing: Videoconference
Hearing dates: May 8 and August 4, 2023
Hearing participant: Appellant
Decision date: August 4, 2023
File number: GE-23-450

Decision

[1] The appeal is dismissed.

Overview

[2] This file is a perfect example of the administrative blunders that sometimes happen in large organizations that have to operate in a crisis. The file the Commission sent was so inconsistent that I had to ask for an investigation to explain to me—and to the Appellant—the different decisions made. It wasn't until the Canada Employment Insurance Commission (Commission) responded that we were finally able to get to the bottom of this confusing case.

[3] In short, this decision should not even have to be made because there is no initial decision by the Commission in the Appellant's file. And so, no reconsideration decision should have been made or challenged.

[4] But there was a decision, incorrect in its reasons, and the Tribunal's reconsideration request must be dealt with. Hence this decision.

Issue

[5] Did the Commission make the right decision when it refused to antedate the Appellant's reconsideration request?

Analysis

[6] The Commission made the right decision when it refused to antedate the Appellant's reconsideration request.

[7] The Commission could not make another decision because there was no initial decision to reconsider.

[8] The Appellant has made several Employment Insurance (EI) claims that, for reasons that aren't always clear, weren't formally decided by the Commission.

[9] The first, in June 2020, was cancelled.¹ This is consistent with the *Employment Insurance Act*, since during the period from March 15 to September 26, 2020, no regular EI claims could be made. Instead, during that period, the Canada Emergency Response Benefit (CERB) applied. The Appellant agrees that she received the benefits due during this period, and so this claim isn't in dispute.

[10] The second claim was allegedly made on July 15, 2020, but was [translation] "not established."² This claim was unnecessary as it was within the CERB's period of application, as mentioned in the previous paragraph.

[11] The third claim, however, deserves attention. It was made on October 30, 2020. The Appellant explained at the hearing that she made this claim because she had to be off work for two weeks after a quarantine resulting from a positive COVID-19 test.

[12] The Commission tells us that this claim was cancelled because the Record of Employment was missing. But the Commission never asked the Appellant for a copy of her Record of Employment and made no decision closing the file. So, the Appellant never had the opportunity to prove her entitlement to benefits and could never challenge the Commission's refusal.

[13] At the case management conference I held this morning to explain to the Appellant the ins and outs (not to say the twists and turns!) of her file, I strongly recommended that she get a valid Record of Employment for the two weeks she was quarantined and therefore off work. She confirmed to me that she would send this Record of Employment to the Commission as soon as she received it.

[14] I encourage the Commission, when it receives this Record of Employment, to process the file quickly and consider the Record of Employment as if it had been filed in October 2020. After all, the Appellant isn't to blame for the many failings and inconsistencies in this file. In my view, she shouldn't be penalized for a series of errors the Commission made, even if they were made in good faith.

¹ GD7-2

² GD7-2

[15] And finally, the issue of the claim for benefits related to this antedate request. And that is where the problem lies. In response to my request for an investigation and report, the Commission told us that no such claim appears in the file. The Commission's December 1, 2022, decision, refusing to antedate the claim for benefits, like its January 31, 2023, decision **should never have been made**. If there is no initial claim for benefits, there can be no request to antedate it. This is self-evident.

[16] The Appellant told me today that she eventually, with the help of a Service Canada agent, made a new claim for benefits for the period of time off work in 2021 that was at the heart of this case. I advised her to follow the file closely and to make sure that she makes any reconsideration request that may be necessary within the 30-day time limit. It is only when an initial decision, followed by a reconsideration decision, has been made by the Commission that this issue can come back to the Tribunal, if necessary.

Conclusion

[17] The appeal is dismissed.

Nathalie Léger
Member, General Division – Employment Insurance Section