



[TRANSLATION]

Citation: *YG v Canada Employment Insurance Commission*, 2023 SST 461

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

**Decision**

**Appellant:** Y. G.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (563357) dated December 13,  
2022 (issued by Service Canada)

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**Tribunal member:** Normand Morin  
**Type of hearing:** Teleconference  
**Hearing date:** August 22, 2023  
**Hearing participant:** Appellant  
**Decision date:** September 15, 2023  
**File number:** GE-23-867

## 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.<sup>1</sup>

## Overview

[2] On October 31, 2022, the Appellant asked the Commission to reconsider a decision it had made on September 9, 2020.<sup>2</sup>

[3] The Commission's September 9, 2020, decision is about the Appellant's availability for work. This decision also says that, if he owes money, he will receive a notice of debt.<sup>3</sup>

[4] On December 13, 2022, the Commission told him that it would not reconsider the September 9, 2020, decision. It said that it had looked at his reasons for his late reconsideration request but had found that they didn't meet the requirements of the *Reconsideration Request Regulations*.<sup>4</sup>

[5] The Appellant explains that he asked the Commission to reconsider its September 9, 2020, decision after the deadline because it was very difficult to communicate with it by phone and because he wasn't able to speak to a Commission representative despite the many calls he made. He says that he also went to a Service Canada Centre (Employment Insurance office) more than once but that the information he received didn't help him resolve his problem to receive benefits. The Appellant says that he only got a phone number that eventually led him to complete a document asking for a reconsideration of the Commission's decision. He says that he also waited to ask for a reconsideration because he wanted to know whether he could receive the Canada Emergency Response Benefit (CERB), which would have allowed him to pay back the

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

<sup>2</sup> See GD3-13 to 20.

<sup>3</sup> See GD3-13 and GD3-14.

<sup>4</sup> See GD3-24.

amount of money he owed for benefits he was overpaid. On March 20, 2023, the Appellant challenged the Commission's December 13, 2022, decision before the Social Security Tribunal of Canada (Tribunal).

## Issue

[6] I have to decide whether the Commission was justified in refusing to extend the 30-day period to ask for a reconsideration.<sup>5</sup>

## Analysis

[7] 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.<sup>6</sup>

[8] 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.<sup>7</sup>

[9] 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*.<sup>8</sup>

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<sup>5</sup> See section 112 of the Act and section 1 of the Regulations.

<sup>6</sup> See section 112(1) of the Act.

<sup>7</sup> See section 1 of the Regulations.

<sup>8</sup> See section 1(2) of the Regulations.

[10] 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.<sup>9</sup>

[11] 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.<sup>10</sup>

[12] The Court has also defined "judicially" as acting in good faith, taking into account all relevant factors and ignoring any irrelevant factors.<sup>11</sup>

[13] The Federal Court has confirmed that the Commission's decision whether to extend the time to ask for a reconsideration is discretionary.<sup>12</sup>

[14] 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.

[15] The Commission argues as follows:

- a) The Appellant was aware of the Commission's September 9, 2020, decision, and he waited until October 31, 2022, to ask for a reconsideration.<sup>13</sup>
- b) The Appellant hasn't shown that he had a reasonable explanation for his delay. He said that he waited more than two years to ask for a reconsideration because he could not get through on the phone to speak to a representative. When he went to an Employment Insurance office (Service Canada Centre), the representatives he spoke to could not help him apply for

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<sup>9</sup> See section 112 of the Act and section 1 of the Regulations.

<sup>10</sup> The Court established or reiterated this principle in the following decisions: *Sirois*, A-600-95; and *Chartier*, A-42-90.

<sup>11</sup> See the Court decisions in *Sirois*, A-600-95; and *Chartier*, A-42-90.

<sup>12</sup> See the Federal Court decision in *Daley*, 2017 FC 297.

<sup>13</sup> See GD4-3.

the CERB. He was waiting for the CERB to pay back his debt instead of asking for a reconsideration on time.<sup>14</sup>

- c) The Appellant hasn't shown that he had a continuing intention to ask for a reconsideration. His file shows that, between the date of the Commission's notice of decision, September 9, 2020, and the date of his reconsideration request, October 31, 2022, Legal Aid made only one request for access to the Appellant's documents, in connection with a reconsideration request, in 2021 (October 27, 2021). The Appellant didn't take any further steps to ask for a reconsideration after that.<sup>15</sup>
- d) Although the reconsideration request was made after the 365-day period after the day the Appellant was notified of the initial decision,<sup>16</sup> the criteria of a reasonable chance of success and no prejudice under section 1(2) of the *Reconsideration Request Regulations* (Regulations) in such a case weren't assessed because the criteria under section 1(1) of the Regulations weren't met.<sup>17</sup>
- e) The Commission says that it exercised its discretion judicially when it refused to extend the 30-day period to ask for a reconsideration of the decision affecting the Appellant. It argues that it considered all the relevant circumstances when it refused the Appellant's late request.<sup>18</sup>

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

- a) He received the Commission's September 9, 2020, decision telling him that it didn't consider him available for work, that it refused to pay him benefits, and that, if he owed money, he would receive a notice of debt.<sup>19</sup>

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<sup>14</sup> See GD4-3 and 4.

<sup>15</sup> See GD4-3 and 4.

<sup>16</sup> See section 1(2)(a) of Regulations.

<sup>17</sup> See GD4-3.

<sup>18</sup> See GD4-3 and 4.

<sup>19</sup> See GD3-13, GD3-14, and GD3-21.

- b) When he received the Commission's decision, he thought he would be able to receive the CERB to pay back the amount of money he owed for benefits he was overpaid.<sup>20</sup>
- c) In his notice of appeal, the Appellant said that he didn't dispute the decision that he wasn't available for work and that he agreed to pay back the amount of money representing the benefits he was overpaid, but on the condition that he received the CERB for the period in question (the period in which he received benefits).<sup>21</sup>
- d) Around November 2020, after receiving a notice of debt from Employment and Social Development Canada, dated October 31, 2020,<sup>22</sup> he contacted the Commission several times. After receiving this notice of debt, he also asked about his eligibility for the CERB.
- e) In November and December 2020, he made several calls to the Commission when he received notices from a recovery agency, in addition to the notice of debt that had been sent to him. He said that he made efforts during the COVID-19 pandemic.<sup>23</sup> It was very difficult to contact the Commission by phone. The wait times were very long (for example, two hours). He didn't wait to talk to Commission representatives.<sup>24</sup>
- f) After his calls to the Commission, he went to a Service Canada Centre twice, in the fall of 2020 and the spring of 2021.<sup>25</sup>
- g) In the fall of 2020, when he went to a Service Canada Centre, he was told that he had to make an appointment first before he could meet with a representative.

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<sup>20</sup> See GD3-21.

<sup>21</sup> See GD2-7 and GD2-8.

<sup>22</sup> See the document entitled "*Notice of Debt / Avis de dette*," issued by Employment and Social Development Canada, dated October 31, 2020—GD2-3, GD3-18, and GD3-19.

<sup>23</sup> Coronavirus disease 2019.

<sup>24</sup> See GD2-8, GD3-15, GD3-16, and GD3-21.

<sup>25</sup> See GD3-15 and 16.

- h) In the spring of 2021, when he went back to a Service Canada Centre, a representative gave him a phone number so he could explain his case (Debt Management Call Centre). When he called the number he was given, he was unable to resolve the problem to receive benefits.<sup>26</sup>
- i) After a discussion with a Commission representative, he decided to ask for a reconsideration.<sup>27</sup>
- j) The Commission then informed him that he could appeal to the Tribunal.
- k) He wasn't in [translation] "good shape" when he made efforts to challenge the Commission's September 9, 2020, decision. It [translation] "exhausted" him to make efforts and not find a solution to his problem to receive benefits. When he made inquiries with the Commission, he wasn't referred to the right places. It [translation] "took a long time" before he was told how to challenge the Commission's decision. In his notice of appeal, he said that he was still very ill after surgery.<sup>28</sup>
- l) Although Legal Aid made a request for access to information in his Employment Insurance file in 2021, he was unable to benefit from its services after that.<sup>29</sup>

[17] In this case, the evidence shows that the Appellant didn't meet the 30-day deadline to ask the Commission to reconsider its September 9, 2020, decision.

### **Reasonable explanation**

[18] I find that the Appellant hasn't given a reasonable explanation for the delay in asking the Commission to reconsider its September 9, 2020, decision.

[19] I find that the Appellant had the opportunity to read the content of that decision. It said, among other things, that he had 30 days to ask the Commission for a

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<sup>26</sup> See GD2-8.

<sup>27</sup> See GD3-21.

<sup>28</sup> See GD2-7.

<sup>29</sup> See GD3-21.

reconsideration.<sup>30</sup> It also told him that, if he owed money, he would receive a notice of debt and repayment instructions.<sup>31</sup> It also told him not to wait for the recovery of the amount he owed and to ask for a reconsideration as soon as possible if he disagreed with the decision.<sup>32</sup>

[20] In my view, when the Commission made its decision on September 9, 2020, there was nothing stopping the Appellant from asking for a reconsideration within the 30-day time limit.

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

[22] Other than the fact that he wasn't in [translation] "good shape" when he challenged the September 9, 2020, decision and that these efforts exhausted him, the Appellant repeats the same reasons he gave the Commission for his delay in asking for a reconsideration.

[23] His reasons are that he was unable to get through on the phone to speak to a Commission representative, he didn't get the help he wanted when he went to a Service Canada Centre, and he was waiting to receive the CERB to pay back the amount of money he owed for benefits he was overpaid.

[24] The Appellant hasn't shown that medical reasons could have prevented him from asking for a reconsideration within the time limit.

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

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<sup>30</sup> See GD3-13 and GD3-14.

<sup>31</sup> See GD3-13 and GD3-14.

<sup>32</sup> See GD3-13 and GD3-14.



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

[26] I find that the Appellant hasn't shown that he had a continuing intention to ask for a reconsideration of the September 9, 2020, decision.

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

[28] The September 9, 2020, decision, told the Appellant that he had 30 days after the date of that decision to ask for a reconsideration.<sup>33</sup>

[29] The evidence on file shows that a notice of debt was also sent to him as of October 31, 2020.<sup>34</sup>

[30] It wasn't until October 31, 2022—more than two years after receiving the Commission's decision—that he asked for a reconsideration.<sup>35</sup>

[31] I find that the Commission correctly determined that the Appellant hasn't shown that he had a continuing intention to ask for a reconsideration of its September 9, 2020, decision.

## **Reasonable chance of success and potential prejudice to the parties**

[32] Given that the reconsideration request was made more than 365 days after the Appellant was notified of the September 9, 2020, decision, the Commission explained that it had to be satisfied that the request had a reasonable chance of success, and that allowing more time to make such a request would not cause prejudice to the Commission or another party.<sup>36</sup>

[33] In its arguments, the Commission said that it didn't determine whether the Appellant's reconsideration request had a reasonable chance of success.<sup>37</sup> It also didn't

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<sup>33</sup> See GD3-13 and GD3-14.

<sup>34</sup> See the document entitled "*Notice of Debt / Avis de dette*," issued by Employment and Social Development Canada, dated October 31, 2020—GD2-3, GD3-18, and GD3-19.

<sup>35</sup> See GD3-15 to 20.

<sup>36</sup> See GD4-3 and 4.

<sup>37</sup> See GD4-4.

determine whether allowing more time could cause prejudice to the Commission or another party.<sup>38</sup>

[34] The Commission says that it didn't determine these factors, since the criteria set out in the Regulations on the reasonable explanation for the delay in asking for a reconsideration and the continuing intention to ask for a reconsideration<sup>39</sup> weren't met in the Appellant's case.<sup>40</sup>

[35] At the hearing, the Appellant didn't present new and relevant evidence to show that his reconsideration request had a reasonable chance of success on the issue referred to in the Commission's September 9, 2020, decision, namely his availability for work.<sup>41</sup>

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

### **Commission's discretion**

[37] 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 delay in making his request.

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

[39] 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 he didn't have a continuing intention to ask for a reconsideration.

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<sup>38</sup> See GD4-4.

<sup>39</sup> See section 1(1) of the Regulations.

<sup>40</sup> See GD4-3.

<sup>41</sup> See GD3-13 and GD3-14.

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

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

## **Conclusion**

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

[43] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section