



Citation: *JD v Canada Employment Insurance Commission*, 2023 SST 772

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

Decision

Appellant: J. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (521528) dated September 2, 2022 (issued by Service Canada)

Tribunal member: Susan Stapleton

Type of hearing: In person

Hearing date: May 24, 2023

Hearing participant: Appellant

Decision date: June 14, 2023

File number: GE-23-388

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant made his request for reconsideration late, and the Commission exercised its discretion judicially when it refused to extend the time for the Appellant to ask for its decision to be reconsidered.

Overview

[3] The Appellant applied for EI regular benefits on September 21, 2020. He received regular benefits for a period of six weeks.

[4] On December 10, 2020, the Commission found that the Appellant wasn't entitled to the benefits he had received, because he had accumulated zero hours of insurable employment between November 24, 2019 and October 17, 2020.¹ This decision resulted in an overpayment to the Appellant.²

[5] On July 11, 2022, the Commission received a request for reconsideration of its December 10, 2020 decision.³

[6] The Commission decided not to reconsider its decision. It says that the Appellant's request for reconsideration was outside of the 30-day time limit to do so, and that the request had no reasonable chance of success.⁴

[7] The Appellant says that when he received the Commission's December 10, 2020 decision, he contacted his Member of Parliament (MP)'s office, and was told that CERB would pay off his overpayment, so he didn't take any further action. He heard from other people that he could ignore letters he received from the Commission that said he had been overpaid, because CERB would take care of it. He says he was given false

¹ See GD3-12-13.

² See GD3-14.

³ See GD3-20-21.

⁴ See GD4-4.

information by his MP and by the Commission about his claim and the process of repayment, and that this delayed his request for reconsideration.⁵

Issues

[8] Was the Appellant's request for reconsideration made outside the 30-day time limit in which to request a reconsideration?

[9] Did the Commission exercise its discretion judicially when it denied the Appellant's request for an extension to the 30-day time limit to request a reconsideration?

Analysis

Issue 1 – Was the reconsideration request made late?

[10] I find that the Appellant's request for reconsideration was made outside the 30-day time limit, and it was over 365 days from when the initial decision was communicated to him.

[11] A claimant can ask for a decision to be reconsidered within 30 days after the day the decision is communicated to him or within any further time that the Commission may allow under the *Reconsideration Request Regulations*.⁶

[12] The decision of the Commission that the Appellant wishes to have reconsidered was sent to him in the form of a letter on December 10, 2020.⁷ He didn't state on his request for reconsideration form when he received the letter.⁸ However, he testified that when he received the Commission's letter, he contacted his MP's office. The MP's office contacted the Commission about its decision on December 16, 2020.⁹ The evidence tells me that the Appellant received the Commission's letter on or before December 16,

⁵ See GD2-5

⁶ See subsection 112(1) of the *Employment Insurance Act (Act)*.

⁷ See GD3-12-13.

⁸ See GD3-20.

⁹ See GD3-15.

2020, because he said the receipt of the Commission's letter prompted him to call his MP's office on that date. This means the Appellant had 30 days from December 16, 2020, to request a reconsideration of the Commission's decision.

[13] I find that as the Appellant's request for reconsideration was received on July 11, 2022,¹⁰ his request was filed outside the 30-day time limit set out in the legislation in which to request a reconsideration, and his request was also made over 365 days from when the initial decision was communicated to him.

Issue 2 - Did the Commission exercise its discretion judicially when it denied the Appellant an extension of the 30-day period to request a reconsideration?

[14] I find that the Commission exercised its discretion judicially when it denied an extension to request a reconsideration.

[15] The Commission's decision whether to allow a longer period to request a reconsideration is discretionary.¹¹ I cannot intervene in a discretionary decision unless it was not made judicially.

[16] For its discretionary decision to have been made judicially, the Commission cannot have acted in bad faith or for an improper purpose or motive. It must not have taken into account an irrelevant factor or ignored a relevant factor, and it must not have acted in a discriminatory manner. Any discretionary decision that is not made "judicially" should be set aside.¹²

[17] At the hearing I asked the Appellant whether he thought the Commission had acted in bad faith, or for a bad motive, or discriminated against him when it decided not to grant him an extension to ask for a reconsideration. He said that he didn't think there was "anything malicious" from the Commission, that it was doing what it had to do, and

¹⁰ See GD3-20-21.

¹¹ See *Daley v Canada (Attorney General)*, 2017 FC 297.

¹² See *Canada (Attorney General) v Purcell*, 1 FCR 644.

there was “just a bunch of confusion.” He said he doesn’t think that the Commission discriminated against him in any way.

[18] On my review of the file and considering the Appellant’s testimony, I don’t see any evidence that indicates that the Commission acted in bad faith, or for an improper purpose or motive, or discriminated against the Appellant when it decided not to grant him an extension to ask for a reconsideration.

[19] I asked the Appellant whether there was any relevant information that he thought the Commission didn’t consider, or whether he thought that the Commission had relied on irrelevant information in making its decision. He said that the Commission made a mistake by paying him benefits in the first place, when he wasn’t entitled to receive them. He doesn’t think the Commission considered that when it made its decision not to grant him an extension to request a reconsideration.

[20] I don’t see on a review of the Commission’s Record of decision¹³ that it took into consideration that it paid the Appellant benefits that he wasn’t entitled to. However, I find that is not a relevant factor that the Commission had to consider when it decided whether to grant the Appellant an extension to request a reconsideration. This is because it has no relation to the Appellant’s delay in asking for a reconsideration. It doesn’t explain the reason for the Appellant’s delay in asking for a reconsideration, or demonstrate any basis to grant him an extension to the time limit to request a reconsideration.

[21] I don’t see evidence of a relevant factor that the Commission ignored, or an irrelevant factor that the Commission relied on, in making its decision.

[22] I find that the Commission exercised its discretion judicially. I can find no evidence that it acted in bad faith, acted with an improper purpose or motive, took into account an irrelevant factor, ignored a relevant factor, or acted in a discriminatory manner when it decided not to grant the Appellant an extension of time to ask for its decision to be reconsidered.

¹³ See GD3-24.

[23] Since I can only intervene in a discretionary decision if the Commission failed to act judicially, and I have found it did act judicially, I cannot change its decision.

[24] This means the Appellant will not be granted an extension to the time limit in which to file his reconsideration request, so the Commission will not be reviewing its initial decision.

Other Matters

The Appellant can ask the Commission to write off the debt

[25] I do not have jurisdiction to write off a debt.¹⁴ Nothing in my decision prevents the Appellant from writing the Commission directly to ask it to reduce or write off the debt. If he is not satisfied with the Commission's response, he may apply to the Federal Court for judicial review.

[26] The law says a claimant is liable to repay benefit money paid to him by the Commission to which he was not entitled.¹⁵ The courts have upheld the principle that a claimant who receives benefit money that he was not entitled to receive must repay the amount.¹⁶

[27] I recognize the financial impact the request to repay these benefits has had on the Appellant. As tempting as it may be in some cases (and this may well be one), I am not permitted to re-write the law or to interpret it in a manner that is contrary to its plain meaning.¹⁷ I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

¹⁴ See *Canada (Attorney General) v. Villeneuve* 2005 FCA440; *Buffone v. Canada (Minister of Human Resources Development)*, A-666-99.

¹⁵ See section 43 of the Act.

¹⁶ See *Lanuzo v Canada (Attorney General)*, 2005 FCA 324. This is how I refer to the courts' decisions that apply to the circumstances of this appeal.

¹⁷ See *Canada (Attorney General) v. Knee*, 2011 FCA 301.

Conclusion

[28] I find that the Appellant made his request for reconsideration late, and the Commission exercised its discretion judicially when it refused to extend the time for the Appellant to ask for its decision to be reconsidered.

[29] This means that the appeal is dismissed.

Susan Stapleton
Member, General Division – Employment Insurance Section