



Citation: *JM v Canada Employment Insurance Commission*, 2023 SST 1238

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

Decision

Appellant: J. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (566982) dated March 8, 2023 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: June 26, 2023

Hearing participants: Appellant

Decision date: July 7, 2023

File number: GE-23-995

Decision

[1] The appeal is allowed.

[2] The initial decision(s) of the Canada Employment Insurance Commission (Commission) that established the \$9,000 debt was never communicated to the Appellant. It is not clear whether the overpayment results from one initial decision or multiple initial decisions; so, I will refer to it as the initial decision (singular) but note that there may be more than one initial decision that would need to be reconsidered.

[3] As the initial decision that led to the overpayment is what the Appellant actually wants reconsidered, and since that initial decision was never communicated to him, this means his request for reconsideration is not late. So, the Commission can reconsider the initial decision that led to the Appellant's overpayment.

Overview

[4] On October 19, 2021, a notice of debt was issued to the Appellant stating he owed \$9,000.00

[5] On January 5, 2023, and January 18, 2023, the Commission received requests for reconsideration from the Appellant asking them to reconsider the \$9,000.00 debt.

[6] The Commission decided not to reconsider the debt. They decided the Appellant's reconsideration request was outside the 30-day time limit to request a reconsideration. While it is possible to get an extension of time to request a reconsideration, they decided that the Appellant's explanation for the delay did not meet the requirements to allow for more time.

Matter I have to consider first

[7] The Appellant was not at the hearing. He had requested the hearing be rescheduled, but his rescheduling request was denied, as he provided no reasons to support why he could not attend or why it should be rescheduled.

[8] I find the Appellant's rescheduling request shows that he received the notice of hearing and was aware of the date and time of his hearing.

[9] The Tribunal did reach out to the Appellant to try and obtain reasons for his rescheduling request but was unable to get a hold of him and he never responded to the message left by the Tribunal, so no reasons were provided prior to my making the decision to deny his rescheduling request.

[10] Since the rescheduling request was denied and notice of this denial was sent to the Appellant, and the Appellant was aware of the date and time of the hearing, it proceeded as scheduled, but without the Appellant.

Issues

[11] I must decide:

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

[13] If so, did the Commission act judicially in its decision to not allow an extension of time for the reconsideration request?

Analysis

Was the Appellant's request for reconsideration late?

[14] I find the Appellant's request for reconsideration was not late, as the initial decision of the Commission was never communicated to him.

[15] A claimant can ask the Commission to reconsider a decision it has made any time within 30 days after the day the decision was communicated to them.¹

¹ Subsection 112(1) of the *Employment Insurance Act*

[16] The Federal Court of Appeal has said that the decision maker has the burden of proving their decision has been communicated to the Appellant.² Here we are concerned with the initial decision which was made by the Commission that led to the debt being established. So, the Commission has to prove it was communicated to the Appellant.

[17] Communicating a decision requires the Appellant know the substance of the decision and its effect.³

[18] The Commission submits the Appellant received the notice of debt dated October 19, 2021, which means he was aware they made a decision.⁴

[19] The Appellant stated on his requests for reconsideration that he never received any sort of decision letter, just a notice of debt for \$9,000.00.⁵

[20] I accept that the Appellant received the October 19, 2021, notice of debt and the Federal Court has confirmed that a notice of debt is a decision of the Commission;⁶ however, I find the notice of debt is not what the Appellant is requesting be reconsidered by the Commission.

[21] A notice of debt does not appear out of thin air. There must be an underlying decision(s) that was made, which resulted in a determination that the Appellant owes money to the Commission. There is always an initial decision that results in the establishment of a debt (and notice of that debt).

[22] I find that, while the Appellant indicated on his reconsideration request that he is disputing the overpayment of \$9,000.00, absent asking for a write-off, which he has not done, the only way to get rid of the debt is to reconsider the initial decision that led to the debt. So, I find that when he asked for the debt to be reconsidered, the Appellant

² *Bartlett v Canada (Attorney General)*, 2012 FCA 230

³ *Cousins v Canada (Attorney General)*, 2007 FC 469. Para 43 and *Peace Hills Trust Co. v Moccasin*, 2005 FC 1364. para 44.

⁴ GD04-2

⁵ GD03-18, GD03-20, GD03-21

⁶ *Velasco v Canada (Attorney General)*, 2023 FC 331

was asking for the decision or decisions that led to the establishment of the debt to be reconsidered. The question, therefore, is when was the initial decision (or decisions) that led to the establishment of the debt communicated to him?

[23] I find that the initial decision (or decisions) that led to the establishment of the debt has never been communicated to the Appellant.

[24] I understand that it is the usual practice of the Commission to send a letter to the Appellant informing him of an initial decision they have made. However, there is no evidence before me of any such letter being sent to the Appellant or any sort of conversation informing him of the initial decision (or decisions) that led to the establishment of the \$9,000 debt.

[25] I note that in their submissions the Commission only mentions the October 19, 2021, notice of debt, and in their record of decision to deny the Appellant an extension of time for the reconsideration request, they only mention the date October 19, 2021.

[26] Since the Commission bears the burden of proving the decision was communicated to the Appellant,⁷ and as I have no evidence of an initial decision letter or any phone call about such initial decision, I can only conclude the initial decision(s) that led to the establishment of the debt have never been communicated to the Appellant.

[27] Yes, I accept that there is some information on the notice of debt about the decision(s) that led to the establishment of the \$9,000,00 debt, but this information is not sufficient to communicate the decision(s) to the Appellant. It does not provide enough detail and the information it does include is very confusing.

[28] First, the notice of debt states the Appellant had the CERB advance payment of \$2,000 turned into a debt because he was paid twice for the same period.⁸

⁷ *Bartlett v Canada (Attorney General)*, 2012 FCA 230

⁸ GD03-14

[29] However, it later states that the CERB advance payment was turned into a \$2,000 debt because the Appellant was no longer entitled to the advance payment of the CERB. This makes it appear as though the Appellant has had the same payment turned into a debt twice but for two different reasons.

[30] I would further note that to make the situation even more confusing the Commission did not actually pay the CERB as that was done through the Canada Revenue Agency. The Commission paid the EI Emergency Response Benefit or EI ERB. The notice of debt confirms this confusion by stating in other places that the Appellant owes them thousands of dollars of ERB because he was paid twice for the same period.

[31] This confusion is then compounded by the fact that the notice of debt says that the occurrence of the events that resulted in the Appellant owing the Commission \$9,000.00 happened in August and September 2021, when the ERB and CERB were no longer in effect⁹ and during a time when the Commission says the Appellant was never collecting any EI ERB or CERB.¹⁰

[32] Considering the above, looking at the notice of debt, it is not clear to me what initial decision(s) resulted in the establishment of the debt. If it is unclear to me, the information in the notice of debt is certainly not sufficient to explain it to the Appellant. In other words, the information in the notice of debt does not “communicate” the initial decision(s) that lead to the debt to the Appellant. And, as I have already found above, the decision that the Appellant wants reconsidered is the decision (or decisions) that lead to the establishment of the debt.

[33] So, in conclusion, I find as fact that what the Appellant wants to have reconsidered is the decision (or decisions) that led to the establishment of the debt. I find that this decision (or decisions) has never been communicated to him. He only became aware that a decision had been made when he received a notice of debt, and

⁹ The ERB benefits could not be collected past October 3, 2020, and no claim for them could be made after December 2, 2020. See section 153.8 of the *Employment Insurance Act*.

¹⁰ The Commission says the Appellant collected all his ERB in 2020 (GD03-27).

why and how the establishment of the \$9,000 debt came about has never been communicated to him.

[34] Therefore, I find that since the initial decision (or decisions) of the Commission that lead to the debt has never been communicated to the Appellant, and since this is the decision (or decisions) he wants to have reconsidered, his request for reconsideration is not late, because the 30-day time limit in which to ask for a reconsideration from the date the decision was communicated never started running.

[35] I suggest that the Commission send to the Appellant the notices of initial decision that resulted in the establishment of the debt and/or reach out to the Appellant to communicate them to him. I also suggest that the Appellant contact the Commission to find out about these decisions. The Appellant has already requested that the initial decision (or decisions) be reconsidered in his reconsideration request of January 2023 (as I have found above) and because it is not late, this means that the Commission can proceed with the reconsideration process.

Did the Commission act judicially?

[36] Since I have found the Appellant's request for reconsideration was not late, there is no need for me to determine if the Commission acted judicially in denying the Appellant an extension of time for his reconsideration request.

Conclusion

[37] The appeal is allowed.

[38] The initial decision(s) of the Commission that led to the establishment of the debt, which is what the Appellant is truly asking to be reconsidered, was never communicated to the Appellant. Since the initial decision was never communicated to him, the 30-day time limit in which to file a reconsideration from the date the decision was communicated never started running, so his request for reconsideration is not late.

Gary Conrad

Member, General Division – Employment Insurance Section