



[TRANSLATION]

Citation: *BM v Canada Employment Insurance Commission*, 2023 SST 1726

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (549629) dated February 3, 2023 (issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: Videoconference
Hearing date: November 23, 2023
Hearing participant: Appellant
Decision date: November 23, 2023
File number: GE-23-2846

Decision

[1] The appeal is dismissed.

[2] I find that the Canada Employment Insurance Commission considered all the relevant circumstances regarding the Appellant's situation when it refused to extend the time to reconsider the July 21, 2020, decision.

Overview

[3] The Appellant applied for benefits on June 23, 2020.

[4] On July 20, 2020, the Canada Employment Insurance Commission (Commission) notified the Appellant that it could not establish a benefit period because he had zero hours of insurable employment between June 16, 2019, and June 27, 2020.

[5] On September 28, 2022, the Appellant asked for a reconsideration after the 30-day period to make this request. He says that the insurable hours were calculated based on the last 12 months, whereas, in his case, that calculation should have focused on the earnings he received in 2019. The Appellant says that he was eligible for the Canada Emergency Response Benefit (CERB).

[6] On February 3, 2023, the Commission told the Appellant that it would not reconsider the July 20, 2020, decision. It found that the Appellant's reasons for the delay in filing his reconsideration request didn't meet the requirements of the *Reconsideration Request Regulations*.

[7] On March 20, 2023, the Appellant filed a notice of appeal with the Tribunal. Since the period for filing the notice of appeal had passed, the Tribunal first had to decide whether there was a reasonable explanation for the delay in filing the notice of appeal before deciding on the delay in asking for a reconsideration.

[8] On May 1, 2023, a General Division member found that the Appellant hadn't provided a reasonable explanation for his delay in filing his notice of appeal.

[9] The Appellant appealed this decision to the Tribunal's Appeal Division. The Appeal Division granted permission to appeal and, on October 6, 2023, found that, since the Commission's decision had been communicated to him when he returned from Morocco on March 8, 2023, he had filed his notice of appeal on time.

[10] The Appeal Division returned the file to the General Division to decide whether the Appellant had a reasonable explanation for the delay in filing his reconsideration request with the Commission.

[11] The Appellant argues that he was entitled to the CERB.

[12] I have to decide whether the Commission's refusal to extend the 30-day period to ask for a reconsideration is justified. Such a decision can only be changed if the Commission didn't use its discretion judicially.

Issues

[13] Did the Commission use its discretion judicially on February 3, 2023, when it refused to reconsider the July 20, 2020, decision?

[14] If I find that the Commission didn't use its discretion judicially, I will have to decide the following issues:

- Does the Appellant have a reasonable explanation for the delay?
- Has he shown a continuing intention to ask for a reconsideration?

[15] Also, since the Appellant's reconsideration request was made more than 365 days after he received the initial decision, if I find that the Commission didn't use its discretion judicially, I will also have to answer the following questions:

- Does the case have a reasonable chance of success?

- Would allowing an extension of time cause prejudice to the other party, the Commission?¹

Analysis

[16] 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 claimant has shown a continuing intention to ask for a reconsideration.²

[17] When a reconsideration request is made after the 365-day period has passed, the Commission also has to be satisfied that the case has a reasonable chance of success and has to consider whether allowing an extension of time to request the reconsideration would cause prejudice to a party.

[18] To determine whether the Commission used its discretion judicially, I have to decide whether the decision is based on all relevant matters and without considering irrelevant ones.³

[19] If I find that the Commission used its discretion judicially, I won't be able to allow the Appellant an extension of time to ask for a reconsideration. But, if I find that the Commission didn't use its discretion judicially, the Appellant can be allowed an extension of time to ask for a reconsideration, and the Commission will reconsider the July 20, 2020, decision.

Did the Commission use its discretion judicially on February 3, 2023, when it refused to reconsider the July 20, 2020, decision?

[20] The Commission's file shows that the Appellant applied for benefits on June 23, 2020. The Commission didn't establish a benefit period for emergency benefits because the Appellant had zero hours of insurable employment in his qualifying period.

¹ Subsection 1(2) of the *Reconsideration Request Regulations*.

² Subsection 1(1) of the *Reconsideration Request Regulations*.

³ This principle is explained in the following decisions: *Sirois*, A-600-95; and *Chartier*, A-42-90.

[21] The Commission's decision says that the Appellant has 30 days to ask for a reconsideration of the decision.

[22] At the hearing, the Appellant explained that, when he received the Commission's decision, he didn't ask for a reconsideration because he thought that it had all the information to make that decision and that he trusted it.

[23] He also says that during this period, he supported his partner who has health issues and that she is now disabled.

[24] The Appellant says that he didn't have any hours of insurable employment between June 16, 2019, and June 27, 2020. He says that his employer, Laurentian Bank, laid him off in April 2019 and that he received Employment Insurance (EI) benefits until June 2020.

[25] In 2021, the Appellant was hired for a contract with the Canada Revenue Agency. He says that he understood then that he was eligible to receive the CERB since he had earned more than \$5,000 in 2019. He argues that the Commission made an error by not telling him about that option.

[26] For this reason, more than two years later, on September 28, 2022, he asked for a reconsideration of the Commission's decision.

[27] The Commission argues that the Appellant didn't intend to pursue his appeal because he only started doing so after completing an internship with the Canada Revenue Agency in 2021. He even delayed applying until September 28, 2022.

[28] It says that it used its discretion judicially when it made the decision, since it considered all the circumstances relevant to the Appellant's situation. It says that it considered that his partner was sick, for example.

[29] Given that the Appellant's reconsideration request came more than 365 days after the initial decision, the Commission could not extend the time for making the request unless it was satisfied that the request had a chance of success. The Appellant

had zero hours of insurable employment in his qualifying period to establish a benefit period.

[30] I find that the Commission considered all the factors relevant to the Appellant's situation. Before making its decision, it considered that the Appellant was caring for his ill partner, and the Appellant's arguments about the CERB.

[31] I understand the Appellant is disappointed because he considers himself eligible for the CERB and can't apply retroactively.

[32] As I explained at the hearing, I have to decide whether the Commission should reconsider its February 3, 2023, decision. This decision relates to the Appellant's June 23, 2020, claim for EI benefits, where the Commission initially found that he didn't meet the eligibility requirements. I can't determine his eligibility for the CERB, which is administered by the Canada Revenue Agency.

[33] But, I understand that in June 2020, before applying for benefits, the Appellant contacted Service Canada for information. At that time, he could have applied for the CERB or for the EI Emergency Response Benefit (EI ERB).

[34] The Appellant applied for the EI ERB. Between March 15, 2020, and October 3, 2020, all claims for benefits were established as EI ERB.⁴

[35] While I understand that the Appellant considers that the Commission made an error because he says he was eligible for the CERB and that it didn't determine his eligibility for that benefit, the Appellant had applied for EI benefits and the Commission could only make a decision based on his entitlement to EI benefits under the *Employment Insurance Act*.

[36] Since the Appellant agrees that he had no hours of insurable employment in his qualifying period from June 19, 2019, to June 27, 2020, the case has no reasonable chance of success.

⁴ As per sections 152.03 and 153.8(5) of the *Employment Insurance Act* (Act).

[37] The Commission assessed all the relevant circumstances related to the Appellant's situation when it refused to reconsider its February 3, 2023, decision. I can intervene only if the Commission didn't consider all the relevant factors in making its decision. And that isn't the case; the Commission has shown that it considered the Appellant's entire situation.

[38] While I understand the Appellant's difficulties, I can't intervene because the Commission used its discretion judicially when it made its decision on February 3, 2023. In other words, the Commission has already assessed the Appellant's reasons for the delay in asking for a reconsideration.

[39] If the Appellant would like to make a complaint about the guidance he got from Service Canada when he applied for benefits, he can contact it to submit his comments.

Conclusion

[40] The Commission used its discretion judicially when it refused to reconsider the February 3, 2023, decision.

[41] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section