



Citation: *RI v Canada Employment Insurance Commission*, 2023 SST 478

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (530820) dated August 30, 2022
(issued by Service Canada)

Tribunal member: Glenn Betteridge
Type of hearing: In person
Hearing date: March 21, 2023
Hearing participant: Appellant
Decision date: April 28, 2023
File number: GE-22-3146

Decision

[1] I am dismissing R. I.'s appeal.

[2] He appealed the Canada Employment Insurance Commission's (Commission) refusal to extend the time for him to request a reconsideration.

[3] He hasn't shown that the Commission failed to act **judicially** when it refused to extend the time. (Below I explain what judicially means.)

[4] So I have no power to change the Commission's refusal to extend time. And because I am dismissing his appeal, he can't appeal the Commission's availability disentitlement decision to the Tribunal.¹

Overview

[5] The Commission went back and reviewed R. I.'s (the Appellant) eligibility for Employment Insurance (EI) regular benefits.

[6] It decided he wasn't available for work for when he was getting benefits. So it disentitled him from getting those benefits. Created an overpayment for benefits he had to pay back. And sent him a notice of debt. (I will call this the Commission's "availability disentitlement decision".)

[7] The Appellant asked the Commission to reconsider the availability disentitlement decision. But he made that request late—more than 30 days after the Commission told him about the decision.

[8] The Commission can extend the time for an appellant to ask for a reconsideration.

¹ That decision is dated January 26, 2022, at GD3-16 to GD3-17. He can't appeal that decision because the EI Act only lets people appeal a **reconsideration decision**. See section 112. The Commission decided not to make a reconsideration decision. And my decision doesn't change that.

[9] The Commission decided not to extend the time in the Appellant's case. It says he didn't give a satisfactory explanation for the delay in asking for a reconsideration. And he didn't demonstrate a continuing intent to make an earlier request.

[10] The Appellant says he doesn't have the time or money to chase the government. And he says the Commission didn't have all the information when it refused to extend the time for his reconsideration request.

[11] I have to decide whether the Commission used its discretion judicially when it denied the extension of time. If it did, I can't change the Commission's decision. If it didn't, I have to decide whether to extend the time for the Appellant to file his reconsideration request with the Commission.

Matter I have to consider first

The Appellant's reconsideration request was late

[12] A person can ask the Commission to reconsider its decision within 30 days of when the Commission **communicates its decision to them**.²

[13] The Commission says it sent the Appellant a decision letter, dated January 26, 2022.³ And it sent him a notice of debt, dated January 30, 2022.⁴

[14] At the hearing the Appellant testified he doesn't remember getting the Commission's decision letter. But he remembers getting statements showing the money he owed.

[15] He testified he spoke to Joe or John at the Commission in November 2021, who told him it was reviewing his EI claim, as of November 15, 2021.

² See section 112(1)(a) of the *Employment Insurance Act* (EI Act) says they have to make their request "within 30 days after the day on which a decision is communicated to them".

³ See the decision letter at GD3-16 to GD3-17.

⁴ See the notice at GD3-18 to GD3-19.

[16] The Appellant also testified that Cheryl from the Commission called him around the end of January 2022, and told him:⁵

- it had reviewed his EI benefits
- he wasn't entitled to regular benefits because he wasn't available and that meant there would be an overpayment (the availability disentitlement decision)
- he had options—one option was to ask the Commission to switch his EI claim from regular to caregiver benefits
- the Commission would send him the medical forms he needed to have a doctor complete to apply to switch⁶

[17] He says he took the medical forms to his parents' doctor in January 2022. But the doctor refused to sign them. So he didn't return them to the Commission. I asked him what he thought would happen when he didn't return the forms. He said he thought the Commission would call him one day to recover the debt.

[18] I find the Commission **communicated its decision to the Appellant** in January 2022. Although he might not have received the Commission's decision letter, I find he knew the Commission had decided he wasn't eligible for EI regular benefits and owed money (availability disentitlement decision).

[19] I have no reason to doubt his evidence about this. He said the Commission told him it was reviewing his EI claim. Then it told him he wasn't entitled to EI regular benefits but might be able to get caregiver benefits. But he says when he couldn't get the medical forms for the caregiver benefits filled out (around January 2022), after that he knew he owed EI a debt. And he thought the Commission would ask him to pay it back.

⁵ See the Commission's notes of its call with the Appellant at GD3-22. This is also what he said at the hearing.

⁶ See also the Commission's notes of its call with the Appellant, at GD3-22.

[20] The parties agree the Appellant made his reconsideration request on July 14, 2022.⁷ I have no reason to doubt this.

[21] So I find the Appellant's reconsideration request was late. The evidence shows me he made his request **more than five months after the Commission communicated its decision to him.**

Issue

[22] Did the Commission act judicially when it refused to extend the time for the Appellant to request a reconsideration?

Analysis

What the Appellant had to show to get an extension of time

[23] The Commission has the decision-making power to extend the 30-day deadline for a person to make a reconsideration request.⁸ In legal terms, this type of decision-making power is called discretion.

[24] To get an extension of time the Appellant had to show the Commission two things:

- he had a **reasonable explanation** for being late; **and**
- he had a **continuous intention** (in other words, he always meant) to ask the Commission to reconsider its decision⁹

[25] In some cases, an appellant has to show the Commission two more things to get an extension of time.¹⁰ The Commission says this isn't one of those cases. I have

⁷ See the Appellant's reconsideration request, which he signed July 14, 2022, at GD3-20 to GD3-21. The Commission acknowledges it received it on July 14, 2022. See GD3-24.

⁸ See section 112(1)(b) of the EI Act.

⁹ See section 1(1) of the *Reconsideration Request Regulations* (Regulations).

¹⁰ Section 1(2) of the Regulations says that a person also has to satisfy the Commission that their request for reconsideration had a reasonable chance of success, **and** no prejudice would be caused to the Commission or another party if the Commission extended the time. A person has to show these extra things where, after the Commission communicated the decision to them: (a) they have asked for a

reviewed the appeal record, and I agree with the Commission. There is no evidence that, in the circumstances of his case, the Appellant had to show two other things.

What it means for the Commission to use its discretion judicially

[26] The EI Act gives the Commission the discretion to decide whether to extend the time for an appellant to make a reconsideration request.¹¹ In other words, the Commission gets to decide whether it should give an appellant an extension of time.

[27] I have to look at **how** the Commission used its discretion in deciding to deny the extension.

[28] The Federal Court of Appeal has decided the Commission has to use its discretion **judicially**.¹² I can change the Commission's refusal to grant an extension of time if the Appellant shows the Commission didn't act judicially because it:

- acted in bad faith
- acted for an improper purpose or motive
- considered an irrelevant factor
- overlooked a relevant factor
- acted discriminatory way

[29] I can also change the Commission's decision if the Appellant shows the Commission reached its decision in a **perverse or capricious manner without regard to the material before it**.¹³ In other words, the Commission's decision goes against the evidence or is irregular. Or the Commission made its decision without fully considering or properly understanding the evidence.

reconsider over 365 days later' (b) they made another application for benefits; or (c) they asked the Commission to rescind or amend the decision under section 111 of the EI Act.

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

¹² See *Attorney General of Canada v Purcell*, A-694-94.

¹³ See *Canada (Attorney General) v Tong*, 2003 FCA 281.

[30] The Appellant can raise a new consideration that wasn't before the Commission. If it is relevant and the Commission didn't consider it, then the Commission didn't use its discretion judicially.¹⁴

What the Commission and the Appellant say

[31] The Commission says it used its discretion judicially when it denied the Appellant an extension of time to request a reconsideration.¹⁵

[32] On his reconsideration request form the Appellant explained the reason for his delay: "Cannot believe they have asked me to repay my EI. Its ridiculous."¹⁶

[33] The Commission says it called the Appellant and got more details about why his reconsideration request was late. The Commission says it considered the following facts and evidence, including what the Appellant told the Commission during that call:

- he took time off work because both his parents had health issues
- he spoke with the Commission about the availability disentitlement decision
- the Service Canada rep he spoke with told him she could help him get the situation resolved and suggested he convert his claim for EI regular benefits to caregiver benefits
- but he didn't send the Commission the medical forms it needed to do this because sometime in January 2022 the doctor refused to fill out the forms
- after that he didn't try to contact the Commission

¹⁴ See *Attorney General of Canada v Dunham*, A-708-95.

¹⁵ See the Commission's representations in the GD4 document.

¹⁶ See the Appellant's reconsideration request at GD3-20 to GD3-21.

- and he didn't file his reconsideration request earlier because he was waiting for Service Canada to straighten out his situation¹⁷

[34] The Commission says it concluded the Appellant:

- knew about the availability disentitlement decision and the overpayment (and debt)—because the Commission sent him a decision letter and notice of debt
- delayed making a request for reconsideration—after unsuccessful attempts to obtain a medical certificate, he made no attempts to learn about and follow his options, including his rights to making an earlier request for reconsideration
- didn't give a reasonable or satisfactory explanation for the delay
- didn't demonstrate a continuing intent to make an earlier request for reconsideration

[35] At the hearing the Appellant said the Commission didn't act in bad faith, act for an improper purpose or motive, consider an irrelevant factor, or act in a discriminatory way.

[36] But he says that the Commission didn't use its discretion judicially because it **overlooked a relevant factor**. The Appellant raised the following facts he says the Commission didn't know and overlooked:

- he didn't get the Commission's decision letter
- he got help to file a reconsideration request when he found out the government was recovering the debt out of money the government owed to him

¹⁷ This information is from the Commission's notes of its call with the Appellant (see GD3-22) and its notes of the evidence, reasoning, and rationale it considered when it refused to extend time (see GD3-24 and GD3-25).

[37] The Appellant says until then he thought the Commission was still working to help him sort out the availability, caregiver, and overpayment issues.

[38] When I asked him what he thought the Commission would do after he didn't send in the caregiver medical forms, he said, "At some point they were going to call me and say, 'we need our money back'". But he says instead the Commission handed the debt to the CRA, which started "stealing" money from his tax refund.

[39] He testified at that point (June or July 2022) he contacted his MP's office for help. And they helped him make his reconsideration request.¹⁸

The Commission used its discretion judicially

[40] I find the Commission used its discretion judicially, for the following reasons.

[41] I accept the Appellant's testimony about what he did and when he did it. I have no reason to doubt what he said. And there is no evidence that goes against what he said.

[42] I accept the Commission's evidence about the facts and circumstances it reviewed when it decided not to extend the time for the Appellant's reconsideration request. And I find the Commission looked at every **relevant** fact and circumstance it should have when it made its decision.

[43] I don't accept the Appellant's argument that the Commission overlooked a **relevant** factor because it didn't know he didn't get its decision letter.¹⁹ I find the decision letter isn't legally relevant. What's legally relevant is whether the Commission **communicated its decision to the Appellant**—because the law says this starts the 30-day period to request a reconsideration. Above I decided the Commission communicated its decision to the Appellant in January 2022. So the fact the Commission assumed he got its decision letter isn't legally relevant.

¹⁸ See the Appellant's reconsideration request at GD3-20 to GD3-21.

¹⁹ The Commission says it notified the Appellant of the original decision on January 26, 2021. This is the date on the decision letter.

[44] And I don't accept the Appellant's argument the Commission overlooked the fact he filed his reconsideration request as soon as he found out the government was recovering the debt from money it owed to him. I find the Commission **considered when and why** the Appellant filed his reconsideration request. In the "reasoning and rationale" section of its decision to deny an extension of time, the Commission notes say:

The requestor has not provided a reasonable explanation for the delay in requesting the reconsideration because he did not make any contact with the commission after the original decision until he filed for a new claim and his benefits were reduced to recover the overpayment. The requestor has not demonstrated a continuing intention to request said reconsideration because he was unable to acquire medical information for family caregiver benefits in January of 2022, but did not take any action to dispute the decision between then and July 14, 2022.²⁰[I have added the underlining.]

[45] For the same reasons, I also find the Commission's refusal to extend time didn't go against the evidence and wasn't made without fully considering or properly understanding the evidence. In legal terms, I find the Commission didn't make its decision in a perverse or capricious manner without regard to the material before it.

²⁰ See the Commission's notes of its reasoning and rationale at GD3-24.

Conclusion

[46] I have decided the Commission used its discretion judicially when it refused to extend the time for the Appellant to make his reconsideration request.

[47] This means I have no power to change the Commission's refusal to extend time.

[48] So I am dismissing his appeal.

[49] And because I am dismissing his appeal, he can't appeal the Commission's availability disqualification decision to the Tribunal.²¹

Glenn Betteridge

Member, General Division – Employment Insurance Section

²¹ He can't appeal that decision because the EI Act only lets people appeal a **reconsideration decision** to the Tribunal. See section 112. The Commission hasn't made a reconsideration decision and my decision doesn't change this.