



Citation: *MS v Canada Employment Insurance Commission*, 2023 SST 1272

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: M. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (574494) dated March 16, 2023 (issued by Service Canada)

Tribunal member: Elizabeth Usprich

Type of hearing: Videoconference

Hearing date: August 1, 2023

Hearing participant: Appellant

Decision date: August 4, 2023

File number: GE-23-1098

Decision

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

[2] The Appellant made his request for reconsideration late, and the Canada Employment Insurance Commission (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 parental benefits in October 2020. At that time, he asked for 18 weeks of benefits. Later, he requested an additional 15 weeks of parental benefits for a total of 33 weeks.

[4] The Appellant says he was told that the benefits would run until May 29, 2021. There is no record of this.

[5] The Commission says the 33 weeks ended on May 22, 2021.

[6] The Appellant called the Commission about this issue. On September 16, 2021, the Appellant spoke with a representative who told him that his benefits were exhausted and he could request a reconsideration if he disagrees.

[7] The Appellant didn't submit a request for reconsideration until February 14, 2023.

[8] The Commission decided on March 17, 2023, that it wouldn't consider the Appellant's request because it was beyond the 30-day reconsideration period and didn't meet the test to extend the timeline.

[9] I must decide if the Commission exercised its discretion fairly.

Issue

[10] Was the Appellant's reconsideration request made late?

[11] 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

[12] When the Commission makes a decision about your EI benefits, the law allows a claimant to ask for reconsideration of that decision. But the request to the Commission has to be made within 30-days of that decision being communicated to you.¹

[13] If you wait more than 30-days to ask for a decision to be reconsidered, you are late. The Commission has the discretion to allow a claimant more time to file a request to reconsider.² There are requirements that an appellant must meet to receive additional time.³

[14] The Commission considers two questions for a late reconsideration request. First, does the claimant have a reasonable explanation for being late? Second, has the claimant shown that they always meant to ask for a reconsideration, even though they were late?⁴

[15] If a claimant waits more than 365 days to ask for a reconsideration of a decision, then there are two additional questions that the Commission has to consider. In those cases, the Commission must also consider if the request for reconsideration has a reasonable chance of success and if there would be any prejudice caused by allowing the longer period for the reconsideration request.

[16] When the Commission has the discretion to do something, as they do here, it can only be changed by the Tribunal **if** the Commission didn't exercise its power judicially.⁵

¹ See section 112(1)(a) of the *Employment Insurance Act*.

² See section 112(1)(b) of the *Employment Insurance Act*.

³ See Reconsideration Request Regulations (Reconsideration Regulations) section 1(1) and 1(2).

⁴ See Reconsideration Request Regulations section 1(1).

⁵ See *Attorney General (Canada) v Knowler*, A-445-05

[17] A discretionary power is not exercised judicially if it can be shown that the decision maker: acted in bad faith; acted for an improper purpose or motive; considered an irrelevant factor or ignored a relevant factor; or acted in a discriminatory manner.⁶

[18] If the Commission didn't properly exercise its discretion, I can make the decision the Commission should have based on the requirements set out in the Reconsideration Regulations.

Issue 1: Was the reconsideration request made late?

– When was the decision communicated?

[19] To decide if the Appellant's reconsideration request was made late, I first need to consider when the Commission communicated its decision to the Appellant.

[20] A claimant can ask the Commission to reconsider a decision it has made, within 30-days after the day the decision was communicated to them.⁷

[21] The Federal Court of Appeal has said that the decision maker has the burden of proving that their decision was communicated to the Appellant.⁸ In this case, that means the Commission must show that their decision was communicated to the Appellant.

[22] The decision, in this case, is about when the Appellant's benefits ended. It is not disputed that the Appellant applied for parental benefits in October 2020. On the Appellant's application for benefits he requested 18 weeks of benefits.

[23] In January 2021, the Appellant wanted to change the length of the parental leave.⁹ The Commission has a note that on March 10, 2021, the Appellant requested to claim an additional 15 weeks of parental benefits for a total of 33 weeks of parental benefits.¹⁰ The Appellant doesn't dispute this.

⁶ See *Attorney General (Canada) v Purcell*, [1996] 1 FCR 644.

⁷ See section 112(1) of the *Employment Insurance Act*.

⁸ See *Bartlett v Attorney General (Canada)*, 2012 FCA 230.

⁹ See GD3-17.

¹⁰ See GD3-18. This was confirmed on April 13, 2021. See GD3-19 where it shows that the Appellant now requested 33 weeks.

[24] The Appellant says he had a conversation with an agent in May 2021 that his benefits would be paid through to May 29, 2021.¹¹ The Appellant testified he only received payment for the period ending May 22, 2021.

[25] The Appellant called the Commission in July 2021 and again in September 2021 about the disputed week of benefits.¹²

[26] On September 16, 2021, an agent told the Appellant he had exhausted his parental benefit entitlement. The agent told the Appellant that if he disagreed with the entitlement weeks, he should submit a request for reconsideration.¹³ The Appellant agrees that the agent told him this.

[27] The Appellant says he understood he had to go online to find the request to reconsider form. The Appellant testified he asked for the form to be mailed to him but was told that he had to go online to get it. The Appellant testified he tried to find the form, but feels because he isn't tech-savvy that he had problems. The Appellant testified he knew he had to submit this form, but he didn't understand that he was supposed to submit it within 30 days.

[28] The Federal Court has decided that communicating a decision requires that an Appellant know the substance of the decision and its effect.¹⁴

[29] I find that the Appellant knew the substance of the Commission's decision and its effect. The Appellant doesn't dispute that he understood that the Commission was denying him any more parental benefit weeks. The Appellant agreed he knew he wasn't given any EI benefit for the week of May 23, 2021 to May 29, 2021.

¹¹ The Commission didn't provide a Supplementary Record of Claim for this call.

¹² See GD3-20 and GD3-21.

¹³ See GD3-21.

¹⁴ *Cousins v Attorney General (Canada)*, 2007 FC 469 at paragraph 43; and *Peace Hills Trust Co. v Moccasin*, 2005 FC 1364 at paragraph 44.

[30] The Appellant said his issue is with the agent that told him in May 2021 that his benefits would be ending on May 29, 2021. The Appellant feels that, even if that was an error, the Commission should still honour their mistake and give him that benefit week.

[31] I find that the Commission made its position clear on September 16, 2021. The Commission communicated to the Appellant that they were not going to extend his benefits. The Commission told the Appellant that he could request a reconsideration if he didn't agree. This means the Appellant knew the effect of the Commission's decision.

[32] I find that the Appellant knew the substance and effect of the Commission's decision and that it was communicated to him on September 16, 2021.

– **Was the Appellant request to reconsideration late?**

[33] The Appellant requested reconsideration of the September 16, 2021 decision on February 14, 2023. The request was more than 30 days after the decision was communicated. This means the request to reconsider was late.

Issue 2: Did the Commission exercise its discretion judicially?

[34] As stated above, I must respect the Commission's discretion if they acted judicially. A discretionary power is not exercised judicially if it can be shown that the decision maker: acted in bad faith; acted for an improper purpose or motive; considered an irrelevant factor or ignored a relevant factor; or acted in a discriminatory manner.

[35] The Commission says the Appellant took over 365 days to request reconsideration. This hasn't been disputed. This means the Commission may allow a longer time to ask for reconsideration only if all the four factors in the Reconsideration Request Regulations are met.¹⁵

[36] I asked the Appellant his opinion on whether or not the Commission acted judicially.

¹⁵ See Reconsideration Regulations) section 1(1) and 1(2).

[37] The Appellant testified that he doesn't think that the Commission was trying to deceive or trick him. He does think that they were acting in bad faith. He testified that the agent should have told him that he had 30 days to file the request to reconsider. The Appellant testified that the request to reconsider wasn't a top priority for him because he was working full-time and he had family obligations.

[38] The Commission spoke to the Appellant after receiving his request for reconsideration.¹⁶ The Commission noted that there were several reasons why the Appellant was late in submitting his request for reconsideration.

[39] The Commission is not under an obligation to inform a claimant of appeal rights in order to meet its obligation to communicate the substance and effect of its decision.¹⁷

[40] I find this means that the Appellant hasn't shown that the Commission acted in bad faith in exercising its discretion.

[41] I asked the Appellant if he thought the Commission acted for an improper purpose or motive. The Appellant testified that he didn't think the Commission acted in a bad way. The Appellant testified he believes that if a parent were to consider what was going on in his life, they would understand why it took longer for him to get the form in.

[42] I appreciate the Appellant's position. I understand that the Appellant had a lot of demands on his time being a parent and working full-time. Yet, I find that 519 days is an excessive amount of time. The Appellant could have, at any time, made inquiries about his rights and obligations (including timelines) under the Act. He didn't. He testified that submitting the form was on his list of things to do, it just wasn't top priority. I don't find that the Commission acted for any improper purpose or motive.

[43] I asked the Appellant about whether he thought the Commission ignored a relevant factor or considered an irrelevant factor. The Appellant testified he now understands that he only had 30 days to submit the request for reconsideration but feels the Commission should have told him that. The Appellant feels the Commission should

¹⁶ See GD3-25 to GD3-28.

¹⁷ See *R & S Industries Inc. v Canada (National Revenue)*, 2016 FC 275.

honour that one of their agent's gave him incorrect information about when his benefits would expire.

[44] I don't find these amount to ignoring a relevant factor or considering an irrelevant factor.

[45] The Appellant didn't feel that the Commission was discriminating against him. I accept his testimony on this point as I don't find anything to the contrary.

[46] The Commission looked at all of the information the Appellant gave about why he was late. The Commission decided that the Appellant didn't have a reasonable explanation for his delay. The Commission decided that the Appellant hadn't shown that he always meant to ask for a reconsideration. The Commission didn't accept the Appellant's late reconsideration request.

[47] Based on my findings above, I find the Commission acted judicially when exercising their discretion. The Commission made its decision fairly because it looked at all of the information the Appellant gave about why his reconsideration request was late. The Commission didn't act in bad faith, for an improper purpose or in a discriminatory manner. This means that I don't have the authority to rule on whether or not the Commission was correct in assessing the four requirements from the Reconsideration Regulations.

Conclusion

[48] The appeal is dismissed.

Elizabeth Usprich
Member, General Division – Employment Insurance Section