



Citation: *ZL v Canada Employment Insurance Commission*, 2023 SST 1754

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

Decision

Appellant: Z. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (557595) dated December 8, 2022 (issued by Service Canada)

Tribunal member: Sylvie Charron

Type of hearing: Videoconference

Hearing date: May 29, 2023

Hearing participant: Appellant

Decision date: July 18, 2023

File number: GE-22-4111

Decision

[1] The appeal is dismissed. This means that I disagree with the Appellant.

[2] The Appellant has not shown that he had a reasonable explanation for the delay in requesting reconsideration. As well, he has not shown a continuing intention to request reconsideration from the Commission.

[3] This means that the Commission exercised its discretion judicially when it denied the Appellant's request to extend the thirty-day period for making a request for reconsideration.

Overview

[4] The Appellant filed an application for Employment Insurance (EI) benefits and established a claim on May 10, 2020. He was then placed on a work-share program, as evidenced by his Record of Employment (ROE) issued in his file.¹

[5] The Appellant was issued benefits under the work-share agreement from May 10, 2020, to August 15, 2020.

[6] On October 29, 2020, the Appellant applied to switch his claim to regular benefits, as the work-share agreement was terminated. This was done and he received regular EI benefits from August 16, 2020, to January 2, 2021.²

[7] On November 11, 2022, the Appellant submitted a request for reconsideration of the Commission's decision to reduce his EI benefits by the amount he was paid under the work-share agreement. This is for the period of May 10, 2020, to August 15, 2020. He argues that he was never paid by the employer who declared bankruptcy due to Covid-19.

¹ GD3-13, 14

² GD3-15

[8] The Appellant decided to request a reconsideration subsequent to receiving a Notice of Debt for an overpayment of the Canada Emergency Response Benefit (CERB).³

Issues

[9] Was the reconsideration request made late?

[10] Did the Commission exercise its discretion in a judicial manner when it denied the Appellant's request to extend the thirty-day period to make a request for reconsideration?

Analysis

[11] Section 112 of the EI Act allows anyone who does not agree with a decision made by the Commission to ask the Commission to reconsider the decision. An Appellant has 30 days to make that request but the Commission can allow a longer period for the Appellant to ask for a reconsideration.⁴

[12] The Commission can allow more time to make the request for reconsideration if it is satisfied that there is a reasonable explanation for the delay, and the Appellant has demonstrated a continuing intention to request the reconsideration.

[13] The Commission's decision to allow the Appellant further time to make a request for reconsideration is discretionary. The Commission's discretion must be exercised according to the criteria outlined in the *Reconsideration Request Regulations*.⁵

Issue 1: Was the reconsideration request made on time?

[14] No. I find that the reconsideration request was not made on time. It was late.

[15] The Appellant agrees that he delayed filing for a reconsideration. It was only when confronted with the CERB overpayment that he decided to file for a

³ GD3-30

⁴ See section 112(1) of the EI Act

⁵ Section 1(1) of the *Reconsideration Request Regulations*

reconsideration in November 2022, more than 2 years after the initial decision to allow him the maximum benefit rate of EI benefits, adjusted for deductions made for the part the employer was to pay under the work-share program.

[16] The Appellant was aware that the work-share program was terminated by August 2020 because the employer could not satisfy Service Canada that the employees were in fact being paid. Then the employer declared bankruptcy.

[17] It was only the Notice of Debt two years later that made the Appellant ask for a reconsideration. This does not demonstrate a continuing intention to make a request.

[18] I find that given the above circumstances, the request for reconsideration was made more than thirty days after the Commission's decision was communicated to the Appellant. It was late.

Issue 2: Did the Commission exercise its discretion in a judicial manner when it denied the Appellant's request to extend the thirty-day period to make a request for reconsideration?

[19] I find that the Commission acted in a judicial manner when it determined that the Appellant did not have a reasonable explanation for delaying his request in the way that he did.

[20] As explained in paragraph 13 above, the Commission's decision to allow a longer period to submit a request for reconsideration is discretionary. This discretion must be exercised according to the *Reconsideration Request Regulations*.⁶

[21] This means that in denying the request for an extension of time, the Commission must act in good faith, with proper purpose and motive, taking into consideration any relevant factors and ignoring irrelevant factors, and acting in a non-discriminatory manner.

⁶ *Daley v Canada (AG)*, 2017 FC 297

[22] I find that there is no evidence in the file, or in the Appellant's testimony, that the Commission acted in a discriminatory manner when it determined that the Appellant did not have a reasonable explanation for the delay in asking for a reconsideration.

[23] The Appellant admitted that the only reason he applied for an extension of time is because he received a Notice of Debt from the Canada Revenue Agency (CRA). Since he has not yet been paid by his former employer under the work-share agreement, he surmised that he should be getting the full EI benefits amount for the period of the agreement.

[24] While this explanation might seem logical, it is not reasonable within the scheme of the Act. I find that the refusal does not show that the Commission acted improperly or in a discriminatory manner.

[25] In reviewing the file, I note that the Commission considered all the relevant information in the Appellant's explanation and properly concluded that the Appellant did not show a **continuing** intention to request reconsideration. As well, the Appellant confirmed in testimony that it was the receipt of the Notice from the CRA that prompted his request...two years after the fact.

[26] The Appellant testifies that it was over two years late because that's how long it took the CRA to decide that he had not been eligible for the CERB payments. While I find that such administrative delays are regrettable, the fact remains that the Appellant received both CERB and partial EI benefits at a time when they were presumably needed, given the Covid-19 pandemic. I note that the Commission has nothing to do with the CERB payments; the Commission handled the Appellant's requests promptly at the time the Appellant was receiving EI benefits.

[27] There is also no evidence that the Commission acted in bad faith. The Commission explained that because the request was late by over a year, it had to

consider whether there was a possibility of success for the Appellant on the issue of extra benefits given the demise of the work-share program.⁷

[28] The Commission considered that the claim could not succeed. The work-share program had been properly set up, and then cancelled, based on the information provided by the employer at the time. There is no bad faith in that decision.

[29] There is also no evidence of discrimination on the part of the Commission.

[30] At the hearing, the Appellant testified honestly and credibly about his circumstances. I find that the Commission acted judicially when it considered the evidence and concluded that the Appellant had not met the two factors to get an extension of time to file a request for reconsideration, that is, a reasonable explanation for the delay and a continuing intention to request reconsideration.

[31] While I am sympathetic to the Appellant's situation, I do not have the authority to change the law or to deviate from the Regulations.

Conclusion

[32] The appeal is dismissed.

Sylvie Charron
Member, General Division – Employment Insurance Section

⁷ See ss. 1(2) of the *Reconsideration Request Regulations*.