



Citation: *ST v Canada Employment Insurance Commission*, 2023 SST 1448

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

Decision

Appellant: S. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (572129) dated May 3, 2023 (issued by Service Canada)

Tribunal member: John Noonan

Type of hearing: In person

Hearing date: July 5, 2023

Hearing participants: Appellant

Decision date: July 20, 2023

File number: GE-23-1397

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, S. T. was upon a determination by the Commission, notified that it was unable to grant him a reconsideration of a December 23, 2020 decision because he did not request the reconsideration within the allowed time and he did not show good cause for being late. The Appellant asserts that the reasons for the delay were due to his not having received notification of the decision. The Tribunal must decide whether to deny the Appellant's request to extend the 30 day period to make a request for reconsideration of a decision under section 112 of the Employment Insurance Act (the Act) and section 1 of the Reconsideration Request Regulations (the Reconsideration Regulations).

Issues

[3] Issue # 1: Did the Appellant fail to complete and submit his reconsideration request within the time frame allotted?

Issue #2: If so, was there good cause for the delay throughout the entire period?

Analysis

[4] The relevant legislative provisions are reproduced at GD4.

[5] Reconsideration Request Regulations: 1(1) For the purposes of paragraph 112(1)(b) of the Employment Insurance Act and subject to subsection (2), the Commission may allow a longer period to make a request for reconsideration of a decision if the Commission is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.

[6] 1(2) The Commission must also be satisfied that the request for reconsideration has a reasonable chance of success, and that no prejudice would be caused to the

Commission or a party by allowing a longer period to make the request, if the request for reconsideration

(a) is made after the 365-day period after the day on which the decision was communicated to the person;

[7] The correct legal test for good cause is whether the Appellant acted as a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act. **Canada (AG) v. Kaler, 2011 FCA 266**

[8] The onus / burden is on the Appellant to show good cause for the delay throughout the entire period. **CUB 18315** The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” the events occurred as described.

[9] Good cause is not defined in the legislation. It can be said to exist where the claimant acted as a reasonable person in the same situation would have acted to ensure compliance with his rights and obligations under the Act. **Paquette v. Canada (AG), 2006 FCA 309**

Issue 1: Did the Appellant fail to complete and submit his reconsideration request within the time frame allotted?

[10] Yes.

[11] Evidence on the file shows that the Appellant was in fact notified, as part of the process that there had been a cancellation of the CERB benefits and the requirement to submit any requested documentation in a timely manner. GD3-15

[12] He then waited over 26 months (well outside the allowable 30 day time frame) to submit his reconsideration request.

[13] An agent of the Commission attempted to discuss the Appellant’s file with him but he refused to authenticate his identity and hung up on the agent. GE3-17

[14] The Appellant, at his hearing, testified that he in fact received the statements but not the December 23, 2020 decision thereby confirming he was aware of the overpayment.

Issue 2: If so, was there good cause for the delay throughout the entire period?

[15] No.

[16] Again, the Appellant, made a call back request on May 3, 2023 requesting clarification regarding his reconsideration request. Evidence further shows that the Commission, on several occasions, through contact information supplied by the Appellant, attempted to contact the Appellant, to discuss his file. Again, the onus is on the Appellant, to inform the Commission of any changes in his contact information. As no changes are noted, it was the Appellant who made it impossible for the Commission to reach the Appellant, regarding his file.

[17] The record shows that the Appellant's address has not changed since December 2020 and there is no indication of returned mail which was sent to the Appellant by the Commission regarding the cancellation of his application and the overpayment involved.

[18] The Appellant asserts he only became aware of these issues when he received statements dated March 2nd and April 2nd, 2023.

[19] However he requested a reconsideration on February 2, 2023, 740 days after the December 23, 2020 decision, which verifies that he knew of the issues here prior to March 2, 2023 as he asserts.

[20] I find, on the balance of probabilities, that the Appellant was, since December 2020, aware of the fact that his application had been cancelled and the overpayment being incurred.

[21] This is further verified by the fact that there had been a substantial amount deducted from the Appellant's tax refund to reduce the amount owed due to the overpayment, he never questioned the deduction further leading to the conclusion he was aware of the reasons involved.

[22] The Appellant testified at his hearing that he received two \$2000 advance payments, one from CRA and the other from Service Canada. He repaid the CRA advance.

[23] He submitted statement copies which indicate a substantial balance owing on January 2, 2023, \$11,560 with a minimum payment of \$351.

[24] The June 2, 2023 statement indicates no balance or payment due. Confusing for the Appellant in that he stated he paid only \$351.

[25] While not part of this appeal it would be beneficial for the Appellant if this could be explained to him. With his limited English skills he is confused as to whether he owes money or not.

[26] However his submissions further verify he was aware of the overpayment prior to receiving the statements of March and April 2023.

[27] The Appellant did not demonstrate a continuing intention to pursue the appeal. I find there is no reasonable explanation for the delay

[28] There would be no prejudice to the other party in allowing or denying the extension.

[29] At his hearing the Appellant testified that he was aware of the monies owing but obtained new employment therefore did not follow up on his claim for benefits..

[30] In this case, I find that the Appellant has not shown evidence of good cause for the delay, 26 months, in submitting his request for reconsideration throughout the entire period.

Conclusion

[31] Having given careful consideration to all the circumstances, I find that the Appellant has not shown good cause throughout the entire period of delay as the onus is on him to do so and the Commission exercised its discretion in a judicial manner acting in good faith, having regard to all the relevant factors, and ignoring any irrelevant factors in reaching the same conclusion.

Canada (AG) v. Uppal, 2008 FCA 388; Canada (AG) v. Tong, 2003 FCA 281; Canada (AG) v. Dunham, A-708-95 therefore the appeal is dismissed.

John Noonan

Member, General Division – Employment Insurance Section