



[TRANSLATION]

Citation: *AT v Canada Employment Insurance Commission*, 2023 SST 1948

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

Decision

Appellant: A. T.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (598681) dated July 13, 2023
(issued by Service Canada)

Tribunal member: Mylène Fortier
Type of hearing: Videoconference
Hearing date: November 9, 2023
Hearing participant: Appellant
Decision date: December 1, 2023
File number: GE-23-2159

Overview

[1] The Appellant in this case is A. T. He worked at X and left on December 12, 2020. On January 20, 2021, he told the Commission that he had left that job for another job that was supposed to start on January 19, 2021, at X.

[2] Then, on October 14, 2021, the Appellant told the Commission that he had left his job on December 12, 2020, to go work for X and X. He said this job started on January 5, 2021.

[3] The Commission found that the Appellant voluntarily left his job without just cause. It disqualified the Appellant from receiving benefits from December 6, 2020. This created an overpayment of \$15,636.

[4] The Commission verbally notified the Appellant of his disqualification on October 19, 2021, and issued a decision the same day. It sent the notice of debt to the Appellant on October 23, 2021.

[5] The Appellant asked for a reconsideration on March 17, 2022.¹ He argued that he already had a job for X and X when he left his job.

[6] The Commission upheld its decision about voluntary leaving. The General Division issued its reconsideration decision on April 22, 2022.

[7] The Appellant filed a second reconsideration request on June 9, 2023.² He indicated that he was asking for a reconsideration of the October 23, 2021, letter (the notice of debt). He again mentioned that he already had another job with X when he left his job. He also said that he explained the situation to Service Canada at the time and that an agent had unblocked his online access, entitling him to receive benefits.

¹ See appeal file at GD3-28.

² See appeal file at GD3-34.

[8] To explain his delay in asking for a reconsideration, the Appellant said that he needed to speak with several people to make the best decision possible. He also said that he needed to gather his evidence before asking for a reconsideration.

[9] The Commission decided that this reconsideration request was about the April 22, 2022, decision (its first reconsideration decision).

[10] It issued a second reconsideration decision on July 13, 2023.³ In its decision, the Commission says that it would not reconsider its decision because more than 30 days had passed since the April 22, 2022, decision, and there was no explanation for the delay.

[11] The July 13, 2023, letter states that an appeal to the Tribunal can be filed within 30 days of receiving it.

[12] This appeal is about that July 13, 2023, decision.

Matter I have to consider first

Should the appeal proceed?

[13] The Commission explained in its arguments that it made an error when it reconsidered its reconsideration decision under section 112 of the Act. It says that it should have instead decided whether section 111 applied.⁴

[14] Section 111 of the Act says that the Commission may rescind or amend a decision given in any particular claim for benefits if new facts are presented or if it is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact.⁵

[15] The June 9, 2023, reconsideration request was clearly about the October 23, 2021, notice of debt and the related disqualification decision. It wasn't about the

³ See appeal file at GD3-37.

⁴ See appeal file at GD4-1.

⁵ See section 111 of the *Employment Insurance Act* (Act).

April 22, 2023, decision, contrary to what the Commission says in its July 13, 2023, decision.

[16] Also, the April 22, 2022, decision can't be reconsidered. But it can be appealed to the Tribunal.

[17] The law says that a person who is dissatisfied with a decision of the Commission made under section 112, including a decision in relation to further time to make a request, may appeal the decision to the Tribunal.⁶

[18] By issuing a new reconsideration decision under section 112 of the Act, the Commission was giving the Appellant the right to appeal to the Tribunal.

[19] But before I can decide whether the Commission used its powers properly by refusing to extend the period to request a reconsideration, I must first decide whether there is an error of law in this decision.

[20] I am of the view that there is an error of law in this decision. The error is that the Commission should not have made a second decision under section 112 because there had already been one and there can only be one.⁷

[21] Because of this error of law, I can't consider this decision.

[22] Since the Tribunal has an Appellant-centred approach, I find that it is in the Appellant's interest to look into whether the first reconsideration decision can be appealed to the Tribunal.

[23] The Appellant disagrees with the disqualification that caused the debt. He makes the same arguments that he made in his first reconsideration request—that he already had a new job when he left his job. So, he argues that he had just cause for leaving his job when he did.

⁶ See section 113 of the Act.

⁷ See *KJ v Canada Employment Insurance Commission*, 2021 SST 357.

[24] The Commission did reconsider the issue that he wanted them to reconsider. There was no subsequent challenge of that first reconsideration decision before the Tribunal.

[25] Since this is undoubtedly the same issue under appeal—the disqualification from benefits and the related notice of debt—it is necessary to assess whether that first reconsideration decision can be appealed to the Tribunal.

[26] Under section 52(2) of the *Department of Employment and Social Development Act* (DESD Act), in no case may an appeal be brought to the General Division of the Tribunal more than one year after the day on which the reconsideration decision was communicated to the Appellant. So, the Tribunal must decide whether the appeal was filed in time.

Analysis

[27] I find that the Commission’s reconsideration decision was communicated in writing to the Appellant in a letter dated April 22, 2022. This letter informed the Appellant of his right to appeal to the Tribunal within 30 days.

[28] I note that the Appellant wasn’t verbally informed of this decision. Although the Commission contacted him by phone on April 20, 2022, he had agreed to call the Commission the next day because he said that he could not take the call.

[29] But the Appellant didn’t call the Commission back or respond to the other two telephone messages it left.

[30] At the hearing, the Appellant confirmed that he had received the reconsideration decision. He hadn’t challenged this decision before the Tribunal because he felt he wasn’t ready. He needed to talk to people and gather his evidence.

[31] I find that the Commission communicated its decision to the Appellant on May 2, 2022, because Canada Post usually delivers mail in 10 days or less in Canada. It is reasonable to believe that this is what happened here. There is no evidence to suggest that the mail was late.

[32] I find that the Appellant appealed the decision to the Tribunal on August 6, 2023. It is the date on the stamp indicating that the Tribunal received the documents.

[33] I find that more than a year passed between when the reconsideration decision was communicated to the Appellant and when he filed his appeal.

[34] I understand the Appellant's position that he wants to eliminate his disqualification and the resulting debt. While he raises the ground that he wasn't ready at the time to file his appeal with the Tribunal, I can't ignore the law.

[35] The Tribunal must apply section 52(2) of the DESD Act. Under this section, an appeal can't be filed more than one year after the reconsideration decision is communicated to the Appellant.

[36] For that reason, I must find that the appeal wasn't filed in time with the Tribunal.

Conclusion

[37] The appeal to the Tribunal wasn't filed in time. This means it can't proceed.

Mylène Fortier

Member, General Division – Employment Insurance Section