



Citation: *TB v Canada Employment Insurance Commission*, 2023 SST 1728

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

Decision

Appellant:	T. B.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (586240) dated May 1, 2023 (issued by Service Canada)
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Tribunal member:	Catherine Shaw
Type of hearing:	Teleconference
Hearing date:	August 16, 2023
Hearing participant:	Appellant
Decision date:	September 1, 2023
File number:	GE-23-1488

Decision

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

[2] The Appellant asked the Canada Employment Insurance Commission (Commission) to accept his late reconsideration request. The Commission refused and the Appellant appealed this refusal to the Tribunal. But, he hasn't shown that the Commission used its discretion unfairly when it refused to accept his late reconsideration request. This means I can't interfere with the Commission's decision. So, the Commission doesn't have to accept his late reconsideration request.

Overview

[3] The Appellant was paid EI benefits while he attended school starting in September 2021. The next year, the Commission decided the Appellant wasn't available for work. It asked the Appellant to repay the benefits he had already received. It sent a letter to the Appellant in June 2022 notifying him of the decision.

[4] Then, in April 2023, the Appellant asked the Commission to reconsider this decision. The Commission decided the reconsideration request was late. It refused to accept the Appellant's late reconsideration request.

[5] The Commission says it has the discretion to make its own decisions about accepting or refusing late reconsideration requests. It says it used its discretion fairly because it looked at all of the relevant information when it made its decision.

[6] The Appellant disagrees. He says he reported that he was in school to the Commission, so it was the Commission's mistake to pay him benefits that he wasn't entitled to receive. He was unsure of how to get this resolved and asked his Member of Parliament's office for help. The MP's office told him to request the reconsideration.

Issues

[7] I have to decide if the Commission must accept the Appellant's reconsideration request. To do this, I have to look at the following:

- a) Was his reconsideration request made late?
- b) Did the Commission use its discretion fairly when it refused to accept his late reconsideration request?
- c) If it didn't, then should the Appellant have more time to ask the Commission for reconsideration?

Analysis

[8] When the Commission makes a decision about your EI benefits, you have a 30-day deadline to ask for a review of the decision. This is called a reconsideration request.¹

[9] If you wait more than 30 days to ask for a reconsideration, your request is late. The Commission has to decide whether it will accept your late reconsideration request.

[10] When it decides whether to accept a late reconsideration request, the Commission looks at two things:

- a) Do you have a reasonable explanation for being late?
- b) Have you shown that you always meant to ask for a reconsideration, even though you were late?²

[11] The Commission makes its own decisions about accepting or refusing late reconsideration requests. This is called a discretionary power.³

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

² These factors are set out in section 1(1) of the *Reconsideration Request Regulations*. The factors set out in these regulations say the claimant has to have a reasonable explanation for the delay and has demonstrated a continuing intention to request a reconsideration. I have used a simplified phrasing of these factors in this decision. If a reconsideration request is made more than one year late, then there are more factors to consider, but that is not the case for this appeal.

³ See *Canada (Attorney General) v Knowler*, A-445-95. This case says that the Commission's power to refuse or accept a late request was discretionary. This is an older decision and was made based on an older form of the legislation, but I still think it is relevant to this matter and there is no other case law that says otherwise.

[12] Even though the Commission has the discretion to accept or refuse a late reconsideration request, the Commission must make its decision fairly. The Commission must look at all of the information when it makes a decision. It should pay attention to relevant information about why you were late and ignore things that are not relevant. It also can't act in bad faith or try to discriminate against you when it makes its decision.

[13] I have to respect the Commission's discretionary power. This means I can't change the Commission's decision unless they acted unfairly. If it acted unfairly, then I can step into the Commission's role and make the decision to accept or refuse the late reconsideration request.

[14] So, to make this decision I will first look at whether the Appellant's reconsideration request was late. If it was, then I have to decide if the Commission used its discretion fairly.

[15] If I decide the Commission used its discretion fairly, then I have to dismiss the Appellant's appeal. This is because I can't change the Commission's decision if it used its discretion fairly.

Was the Appellant's reconsideration request late?

[16] Yes. The Appellant's reconsideration request was late.

[17] The Commission says that it notified the Appellant of the decision by letter dated June 17, 2022. The Appellant agrees that he received this letter. He submitted a request for reconsideration form to the Commission on April 6, 2023.

[18] The Appellant asked for a reconsideration more than 30 days after the Commission's decision was communicated to him. This means his reconsideration request was late.

Did the Commission use its discretion fairly when it refused to accept the late reconsideration request?

[19] I find the Commission used its discretion fairly when it refused to accept the Appellant's reconsideration request.

[20] The Commission says that it used its discretion fairly because it looked at all relevant information when it made its decision.

[21] The Appellant says the Commission should reconsider its decision because he contacted them numerous times to try and understand the Commission's decision. Finally, he got help from a governmental representative from his region and they told him to submit a request for reconsideration.

[22] The Commission says the Appellant didn't contact the Commission between the date the decision was made and when he asked for reconsideration.

[23] I asked the Appellant about this at the hearing, and he agreed that he didn't contact the Commission during this time. Rather, he had contacted the Commission before it made the decision. He found the Commission officer he spoke with wasn't straightforward about what was preventing him from being paid benefits. So, he decided to try and figure the decision out on his own, with the help of his friends and other students. Eventually, he contacted his MP's office, who advised the Appellant to ask for a reconsideration.

[24] The Appellant hasn't shown me that the Commission used its discretion unfairly when it made its decision. I find the Commission looked at all of the relevant factors and didn't consider irrelevant factors. There is no evidence the Commission acted in bad faith or tried to discriminate against the Appellant when it refused to accept his late reconsideration request.

[25] The Appellant asked for a reconsideration within a year of when he received the Commission's decision. This meant the Commission had to look at whether he had a reasonable explanation for his reconsideration request being late, and whether he

showed that he always meant to ask for a reconsideration. The Commission recognized this when it made its decision and looked at each of these factors.

[26] The Commission also considered the following factors when it looked at the Appellant's late reconsideration request:

- He said he didn't know he could ask for a reconsideration, even though the decision letter had specific instructions on how to request reconsideration.
- He said he was "unsure of the situation" but didn't contact the Commission for help.
- He asked his MP's office for guidance.

[27] At the hearing, I asked if the Commission should have considered any other information when it looked at the Appellant's reconsideration request. The Appellant said that the following was important:

- A Commission officer told him that EI benefits weren't designed for people in a training program. And if someone in school tried to claim benefits, they would be denied.
- He reported that he was in school to the Commission, and he was still paid benefits. It was the Commission's error to pay him, through no fault of his own, so he shouldn't have to repay the overpayment.

[28] With due respect to the Appellant, these aren't factors that were relevant to the Commission's decision whether to accept his late reconsideration request. So, the Commission didn't act unfairly by not considering them.

[29] As set out in paragraphs 7 and 22 above, the Commission had to look at two factors to decide whether to accept the Appellant's late reconsideration request. First, it had to see whether the Appellant had a reasonable explanation for making his request

late. And second, it had to see if the Appellant had shown that he always intended to ask for reconsideration, even though it was late.

[30] While the Appellant's disclosure of his school attendance may be relevant to his availability, it is not relevant to the Commission's decision to refuse his late reconsideration request.

[31] When I look at everything in the appeal file, I think the Commission used its discretion fairly. It used the correct parts of the law to look at the Appellant's request. It considered every factor and circumstance the Appellant brought up. It didn't rely on irrelevant or unimportant factors. The Appellant hasn't shown me that the Commission acted in a way that was discriminatory or in bad faith.

[32] This means the Commission used its discretion fairly when it refused to accept the Appellant's late reconsideration request. So, I can't interfere with the Commission's decision.

Conclusion

[33] The appeal is dismissed.

[34] The Appellant's reconsideration request was late. The Commission doesn't have to accept the late reconsideration request.

Catherine Shaw
Member, General Division – Employment Insurance Section