



Citation: *MP v Canada Employment Insurance Commission*, 2023 SST 1905

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: M. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (566457) dated January 19, 2023 (issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: Teleconference

Hearing date: June 23, 2023

Hearing participant: Appellant

Decision date: June 26, 2023

File number: GE-23-247

Decision

[1] The appeal is dismissed.

[2] The Respondent (Commission) exercised its discretion improperly when it denied the Appellant's request to extend the time for reconsideration of the decision denying his claim for employment insurance (EI) benefits because he lost his job due to his own misconduct¹.

[3] But the Appellant has not satisfied the legal test to extend the time for reconsideration, so the decision will not be reconsidered.

Overview

[4] The Appellant applied to renew his claim for regular EI benefits on December 7, 2021. On January 28, 2022, the Commission decided not to pay EI benefits to the Appellant on the renewal of his claim. It said he was disqualified from EI benefits because he was dismissed from his job due to his own misconduct (the disqualification/misconduct decision).

[5] On December 29, 2022, more than 30 days beyond the statutory deadline to request a reconsideration, the Appellant asked the Commission to reconsider the January 28, 2022 disqualification/misconduct decision. The Commission decided the Appellant did not satisfy the test to allow a longer period to request a reconsideration² and declined to reconsider the decision.

[6] The Appellant appealed the Commission's denial of his request to extend the time for reconsideration to the Social Security Tribunal (Tribunal).

[7] The Appellant says he was never told about his right to ask for a reconsideration, but always felt that the decision on his claim was wrong. He didn't learn about the reconsideration process until a colleague shared their EI experience with him in September or October 2022. Then, in December 2022, he learned of a favourable

¹ I will refer to this decision as "the disqualification/misconduct decision".

² Set out in sections 1(1) and 1(2) of the *Reconsideration Request Regulations*.

decision from the Tribunal allowing an appeal of a disqualification/misconduct decision in a fact scenario similar to his. This new decision from the Tribunal prompted him to file a request for reconsideration so he could appeal the disqualification/misconduct decision on his claim.

[8] The Commission says it exercised its discretion to deny the Appellant's request to extend the 30-day reconsideration period properly. It says it took all relevant factors into account when it determined the Appellant did not provide a reasonable explanation for his delay of nearly 1 year or show a continuing intention to request a reconsideration.

[9] I must decide if the Commission exercised its discretion fairly³.

[10] I find that the Commission failed to exercise its discretion properly when it declined the Appellant's late reconsideration request. It should have considered that no decision letter was sent to the Appellant advising him of the disqualification/misconduct decision and the 30-day timeframe to request a reconsideration of the decision.

[11] However, for the reasons set out below, I also find that the Appellant has not satisfied the legal test to extend the time for reconsidering the disqualification/misconduct decision. This means it will not be reconsidered.

Preliminary Matter

[12] The issue of whether the Appellant should be disqualified from EI benefits because he lost his job due to misconduct⁴ is not before me on this appeal.

[13] The Tribunal's jurisdiction is limited to decisions that have been formally reconsidered⁵. Since the disqualification/misconduct decision has not been reconsidered, I have no jurisdiction to review that decision.

³ That is, if the Commission acted in good faith and for proper purpose and motive, took all relevant factors into account, ignored irrelevant factors and did not otherwise act in a discriminatory manner (*Dunham A-708-95*).

⁴ That is, misconduct **as the term is used for purposes of EI benefits**.

⁵ Sections 112 and 113 of the EI Act.

[14] I therefore make no findings with respect to the disqualification imposed on the Appellant's renewal claim or whether he lost his job due to his own misconduct.

Issue

[15] I have to decide whether the Commission should accept the Appellant's reconsideration request.

[16] To make this decision, I must consider these questions:

- a) Is the Appellant's reconsideration late? If so, how late?
- b) Did the Commission make its decision fairly when it refused to accept his request for reconsideration?

[17] If I find the Commission didn't make its decision fairly, then I can look at the legal test for extending the time to request a reconsideration and make my own decision about whether the Commission should accept the Appellant's reconsideration request.

Analysis

[18] The law allows you to ask the Commission to reconsider a decision, but you must do so within 30 days of that decision being communicated to you⁶.

[19] If you wait more than 30 days to file your request for reconsideration, you are late.

[20] The Commission has discretion to allow more time to request a reconsideration⁷, **but only if** you satisfy the legal test for an extension beyond the 30-day period.

[21] The *Reconsideration Request Regulations* set out the legal test that must be met for an extension of time.

⁶ See section 112(1)(a) of the EI Act.

⁷ See section 112(1)(b) of the EI Act

[22] The first part of the legal test says the Commission may allow a longer period to ask for a reconsideration **only if** it is satisfied that:

- a) you have a reasonable explanation for being late; **and**
- b) you have shown a continuing intention to request reconsideration, even though you were late⁸.

[23] The second part of the legal test says that if your request for reconsideration is submitted more than 365 days after the original decision was communicated to you, the Commission **must also be satisfied that**:

- c) your request for reconsideration has a reasonable chance of success; **and**
- d) there would be no prejudice to the Commission or any party by accepting the late request for reconsideration⁹.

[24] The Commission can only accept a late reconsideration request and review the decision if you meet **all** the conditions in the applicable legal test.

[25] The Commission's decision to accept or refuse a late request for reconsideration is a discretionary one. As such, it cannot be changed unless the Commission failed to exercise its discretion fairly.

[26] This means the Appellant must prove that the Commission's decision to refuse his late reconsideration request was made in bad faith, or based on irrelevant considerations, or failed to take into account all relevant considerations, or was made in a discriminatory manner¹⁰.

[27] If the Commission didn't make its decision fairly, I can step into the Commission's role and make the decision to accept or refuse the late reconsideration request.

⁸ Subsection 1(1) of the *Reconsideration Request Regulations*

⁹ Paragraph 1(2)(a) of the *Reconsideration Request Regulations*

¹⁰ *Canada (Attorney General) v. Dunham*, A-708-95

Issue 1: Was the Appellant’s reconsideration request late?

[28] Yes, it was.

a) When was the decision communicated to him?

[29] The law says you have 30 days after the Commission communicates its decision to ask for a reconsideration of that decision.

[30] To communicate a decision, the Commission must show it told you about the “substance” and “effect” of its decision¹¹. However, the Commission has no obligation to inform you of your appeal rights in order to meet its obligation to communicate the substance and effect of its decision to you¹².

[31] The Commission did not issue a decision letter to the Appellant.

[32] Instead, the Appellant was verbally notified of the disqualification/misconduct decision – and his reconsideration rights – on January 28, 2022¹³.

[33] The Commission also responded to an inquiry from the Appellant’s Member of Parliament (MP) and verbally notified the MP’s assistant of the decision – and the Appellant’s reconsideration rights – on January 28, 2022¹⁴.

[34] At the hearing, the Appellant testified that:

¹¹ I am guided by several Federal Court decisions: *Atlantic Coast Scallop Fishermen’s Assn v Canada (Minister of Fisheries and Oceans)*, A-163-95, A-162-95; *Peace Hills Trust Co. V Moccasin*, 2005 FC 1364; *Cousins v Canada (Attorney General)*, 2007 FC 469; *Skycharter Ltd. V Canada (Minister of Transport)*, T-2625-96; *R&S Industries Inc v. Minister of National Revenue*, 2016 FC 320. None of these decisions are directly related to the question of the meaning of “communicated” in paragraph 112(1)(a) of the EI Act. However, I find them persuasive in this case because they describe the meaning of “communicated” in the *Federal Courts Act*. The purpose of both statutes are similar in that they describe the time limits affecting the right to recourse after a decision-making body makes a decision.

¹² See *R & S Industries Inc. v. Canada (National Revenue)*, 2016 FC 275 (CanLii).

¹³ See the Action Item at GD3-15. See also GD3-18 for the Appellant’s confirmation that he spoke with an agent of the Commission about the decision.

¹⁴ See GD3-15.

- By January 2022, he knew the Commission had decided he would not be paid EI benefits (on the application he'd filed in December 2021) because he lost his job due to misconduct.
- However, he did not get a decision letter from the Commission, and he was not advised of his right to ask for a reconsideration or told there was a timeframe for doing so¹⁵.
- He wasn't aware he could ask for reconsideration until September or October 2022, when a colleague shared his experience and described the reconsideration process to him.
- He didn't take any steps to request a reconsideration until December 2022, when he learned the Tribunal had made a favourable decision on the issue of misconduct in a fact scenario similar to his. That was when he decided to ask for a reconsideration.
- This new, favourable Tribunal decision is what prompted him to submit his Request for Reconsideration form.

[35] I find the disqualification/misconduct decision was communicated to the Appellant on January 28, 2022.

[36] By January 28, 2022, the Appellant was aware of both the **substance** of the Commission's decision (that his dismissal from his employment was due to his own misconduct) and the **effect** of the decision (that he would not be paid EI benefits on the application he filed in December 2021). This was sufficient to communicate the disqualification/misconduct decision to him.

[37] In coming to this conclusion, I give the most significant weight to the Commission's Action Item at GD3-15. The Action Item shows that as of January 24,

¹⁵ At GD3-18, the Appellant told the Commission that the original Service Canada agent he spoke with about the disqualification/misconduct decision did not inform him of his right to request a reconsideration or the 30-day timeframe for doing so.

2022, the Commission was investigating the Appellant's dismissal from his employment. It also shows the Commission's determination that the dismissal was due to Appellant's own misconduct. And it shows that, as of January 28, 2022, both the Appellant and his MP's office had been told of the disqualification imposed on his claim and the process for appealing within the next 30 days.

[38] The Action Item is a detailed record of the steps taken by the Commission and was created contemporaneously with the investigation, the decision, and the communications with both the Appellant and the MP's office. I consider the completion of the Action Item for the MP's inquiry on January 28, 2022 to be reliable evidence that the Appellant was told about the substance and effect of the Commission's decision, and given his reconsideration rights (although perhaps not in a way that registered with him¹⁶).

[39] The Appellant didn't file his Request for Reconsideration until December 29, 2022, so it was late.

b) How late was his reconsideration request?

[40] It was 11 months late.

[41] The decision was communicated to the Appellant on January 28, 2022 and his Request for Reconsideration was received by the Commission on December 29, 2022.

[42] Because his reconsideration request was less than a year late, the Appellant only needs to satisfy the first part of the legal test to extend the time to request a reconsideration.

[43] This means the Appellant needs to show 2 things:

- c) That he had a reasonable explanation for being late with his Request for Reconsideration, and

¹⁶ This is discussed further under Issue 3 below (see footnote 18).

- d) That he had a continuing intention to ask for a reconsideration between January 28, 2022 and December 29, 2022.

Issue 2: Did the Commission exercise its discretion fairly when it declined the Appellant's reconsideration request?

[44] No, it did not.

[45] I have reviewed the Record of Decision for the Commission's denial of the Appellant's late reconsideration request¹⁷. The Commission emphasized the fact that Appellant was aware of the negative decision on his claim in January 2022, and discounted his statements that he was not informed of his right to request a reconsideration – by either the Commission or his MP's office.

[46] This is troubling because the question of how and when the Appellant became aware of his right to request a reconsideration is relevant to both factors of the legal test he must satisfy to have the 30-day period for requesting a reconsideration extended.

[47] The Appellant testified that:

- In January 2022, he knew the Commission had decided not to pay him EI benefits **and** that the reason was because the Commission said he lost his job due to his own misconduct.
- He disagreed with the finding of misconduct and didn't think the decision was right.
- But he was never told he had a right to ask for a reconsideration of the decision.
- This was his first time going through this process.

¹⁷ At GD3-21 to GD3-22.

- The information about having the right to ask for a reconsideration – and the 30-day deadline for doing so – was important information. If he wasn't given this information, how could he have acted on time?
- He didn't learn about the reconsideration process until a colleague told him about it in September or October 2022.
- That was when he started looking at the EI website to learn more about the reconsideration process.
- Then, in December 2022, he found out that the Tribunal had made a decision that overturned a finding of misconduct and was favourable to an Appellant in very similar circumstances to his. This spurred him to file a Request for Reconsideration.

[48] For the reasons set out in Issue 1 above, I agree with the Commission that the disqualification/misconduct decision was communicated to the Appellant on January 28, 2022.

[49] But I accept the Appellant's testimony that he did not receive written notice of his reconsideration rights and was not told about his reconsideration rights **in a meaningful way**¹⁸ until September or October 2022. The lack of decision letter and the fact he was

¹⁸ I accept the Commission's evidence at GD3-15 that the Appellant was verbally advised of his reconsideration rights.

But I'm not satisfied the Appellant understood his reconsideration rights **in a meaningful way** after his conversation with the Service Canada agent about the decision to deny his claim for EI benefits.

It was apparent from the Appellant's testimony that he was upset with the finding of misconduct and the employer's refusal to grant him a religious exemption to its Covid-19 vaccine policy. I cannot be certain that, having been told of the negative decision, he was able to think clearly enough to understand what a reconsideration was, what it involved, or that there was a 30-day timeframe to request a reconsideration. Nor am I confident he would even be able to recall the term "reconsideration" after he was verbally advised of the decision and the reason why he would not be paid EI benefits on his claim.

I would have come to a different conclusion if the Commission had followed-up on the verbal notification with a decision letter to the Appellant. The Commission's decision letters normally contain the following wording at the end:

"Our decisions are based on the *Employment Insurance Act* and its *Regulations*. If you have already provided all pertinent information and still disagree with this (these) decision(s), **you have**

unaware of his reconsideration rights in a way that registered with him for months after the decision was communicated to him are important and relevant factors in determining if the Appellant had a reasonable explanation for his delay and a continuing intention to request a reconsideration.

[50] The Commission should have taken these factors into consideration in its analysis of whether the Appellant satisfied the test to extend the time for reconsideration of the disqualification/misconduct decision. It did not do so.

[51] Because the Commission overlooked these relevant factors when it made its decision, I find that it didn't use its discretion fairly. This means I can step into the Commission's role and apply the legal test to make my own decision about the Appellant's late reconsideration request.

Issue 3: Has the Appellant satisfied the legal test to extend the time to request a reconsideration?

[52] No, he has not.

[53] The Appellant has not provided a reasonable explanation for his delay or proven he had a continuing intention to request a reconsideration.

30 days following the date of this letter (or from the date you were verbally notified, whichever occurred first) to make a formal request for reconsideration to the Commission. For more information on how to request a reconsideration and to access the Request for Reconsideration of an Employment Insurance decision form, please visit www.canada.ca/en/services/benefits/ei/ei-reconsideration.html, contact us at 1-800-206-7218 or visit the nearest Service Canada Centre.

With a decision letter, the Appellant would have had a document to refer to after the shock and stress of being verbally advised of the decision had abated. He would have been able to read and understand that he needed to "make a formal request for reconsideration to the Commission" if he disagreed with the denial of his EI benefits. He would have known where to find the form and any additional information he needed. And he would have been clear he had to take steps within 30 days if he disagreed with the misconduct decision. This would have been especially important for a first-time claimant, which the Appellant indicated he was.

In the absence of a decision letter, the Appellant didn't hear the word "reconsideration" again until September or October 2022, when speaking with his colleague. That was when the reconsideration process was described in a way that registered with him and he realized there were steps he had to take, a form he had to fill out and a timeframe for doing so. This is why I say the Appellant was not told about his reconsideration rights **in a meaningful way** until September or October 2022.

a) Reasonable Explanation for the Delay

[54] The Appellant has not provided a reasonable explanation for his delay.

[55] Given my findings under Issues 1 and 2 above, the Appellant must provide a reasonable explanation for delaying from January 28, 2022 (the date when the decision was communicated to him) to December 29, 2022 (the date he filed his Request for Reconsideration).

[56] The Appellant testified about the reasons for his delay as follows:

- In January 2022, when he learned the Commission was not going to pay him EI benefits because it decided he lost his job due to his own misconduct, he wasn't told he could ask the Commission to reconsider this decision.
- He always believed the decision was wrong because he complied with his employer's Covid-19 vaccination policy when he asked for a religious exemption. There is no misconduct in asking to be exempt from vaccination.
- But he wasn't given a decision letter explaining what to do if he disagreed with the decision denying his EI benefits.
- Between January 28, 2022 and September or October 2022, he didn't take any steps to contact Service Canada or investigate how the decision might be appealed or overturned.
- This is because he was dealing with a lot of stress, including:
 - the stress of the pandemic and "all of the new rules" about Covid,
 - the stress of losing his employment and having his request for a religious exemption "ignored" by his employer,
 - the stress of family members losing their jobs as well due to Covid,
 - the stress of not getting EI benefits after paying into the program,

- the stress of having to look for a new job and, eventually, the stress of starting a new job.
- It was also his “first time going through this process” and he wasn’t familiar with the rules of EI. He was “discouraged” and “not thinking clearly”. He found it all “quite taxing”.
- He didn’t become aware of the reconsideration process until September or October 2022, when a colleague shared his experience with him and told him he could ask the Commission for a reconsideration.
- After the discussion with his colleague, he started looking into the reconsideration process by reading information on the EI website and trying to figure out the steps he had to take.
- He was still “highly stressed”, and it took time for him to understand and interpret the information on the website and “learn how to do an appeal”.
- In December 2022, he became aware of a favorable decision from the Tribunal that he believed would help him overturn the finding of misconduct in his case¹⁹.
- Learning of this favorable decision is the thing that spurred him to file his Request for Reconsideration so he could appeal the decision on his own claim for benefits.

[57] I acknowledge that the Appellant was not fully aware of his right to request a reconsideration until September or October 2022. But I don’t think this is a reasonable explanation for his delay from January 28, 2022 until that time. If the Appellant thought the January 28, 2022 disqualification/misconduct decision was wrong, it would have been reasonable for him to make some enquiries and find out if there was a way to overturn the decision - either by contacting Service Canada or going to the EI website. I

¹⁹ The Appellant is referring to the decision in *AL v Canada Employment Insurance Commission*, 2022 SST 1428, which was issued by Tribunal Member Mark Leonard on December 14, 2022. This case is discussed further under “b) Continuing Intention to Request a Reconsideration” below.

can see he is able to make enquiries and reach out for assistance by how he involved his MP's office to follow-up with the Commission about making the decision²⁰. But for 9 or 10 months after the decision was made – from January 28, 2022 to September or October 2022 – he didn't take any steps to enquire about the possibility of overturning the decision, even though he and his family members were dealing with the loss of their jobs and experiencing financial stress. This was not reasonable.

[58] I also acknowledge that the pandemic was a tumultuous time, and that the Appellant was highly stressed about his job loss and searching for new employment. But I don't think this is a reasonable explanation for his delay either. All claimants seeking regular EI benefits are separated from their employment and must be actively seeking other employment in order to receive EI benefits²¹. These circumstances can admittedly be stressful, but they do not relieve claimants from complying with the timelines and responsibilities set out in the EI Act and its related Regulations.

[59] Finally, even taking into account that the Appellant was not fully aware of his right to request a reconsideration until September or October 2022, he still does not have a reasonable explanation for delaying from September or October 2022 until December 29, 2022. As of September or October 2022, he had the information from his colleague and was searching the Service Canada website to inform himself about the reconsideration process. It would have been reasonable for him to have known he was already late and needed to act quickly to get his Request for Reconsideration form filed. Yet he did not do so. And I don't see anything that prevented him from asking for a reconsideration sooner²².

²⁰ See GD3-15.

²¹ This requirement is set out in the application for EI benefits itself (see GD3-7).

²² The Appellant could not recall if the conversation with his colleague was in September or October 2022. Even if I count 30 days from the last day of October (the 31st), the Appellant's Request for Reconsideration would have been due by November 30, 2022. I see no evidence he was prevented from submitting his Request for Reconsideration by then. But he didn't file it until December 29, 2022. I asked the Appellant why he didn't file his Request for Reconsideration as soon as his colleague told him he could ask for a reconsideration. He said he was starting a new job, needed time to research the process on Service Canada's website and was still stressed from everything going on in the world. For the reasons in paragraphs 57 and 58, I do not find this to be a reasonable explanation for his delay between September or October 2022 and December 29, 2022.

[60] For all of these reasons, I find the Appellant has not provided a reasonable explanation for his delay in filing his Request for Reconsideration.

[61] I am further supported in my finding by the analysis of the Tribunal's Appeal Division in a similar recent case²³ (the SS case). In the SS case, the claimant was late filing his appeal and requested an extension of time. To grant an extension of time to appeal, the Tribunal's Appeal Division had to decide whether the claimant had a reasonable explanation for why their application for leave to appeal was late. The claimant in the SS case referred to the same favourable decision that the Appellant in this appeal did²⁴, and explained that it came out after the deadline to submit his appeal had passed. The Appeal Division in the SS case ruled:

"The fact that a decision that appears to be favorable to the Claimant was rendered after his appeal deadline is not a reasonable explanation for why he is late."²⁵

b) Continuing Intention to Request a Reconsideration

[62] The Appellant has not shown a continuing intention to ask for a reconsideration during his delay.

[63] For the reasons set out in paragraph 57 above, I find there is no evidence of a continuing intention to request a reconsideration between January 28, 2022 and September or October 2022.

[64] By September or October 2022, the Appellant had been told by his colleague that he could ask for a reconsideration. But he still didn't file his Request for Reconsideration until December 29, 2022.

[65] He testified that:

²³ *SS v. Canada Employment Insurance Commission*, 2022 SST 282

²⁴ See footnote 23 above.

²⁵ In coming to this conclusion, the Appeal Division followed the reasoning of several decisions from the Federal Court (see *SS v. Canada Employment Insurance Commission*, 2022 SST 282 at paragraph 8).

- He has a colleague who “went through something similar” when they lost their employment.
- In September or October 2022, this colleague told him that he could appeal the disqualification/misconduct decision and explained what he needed to do.
- Prior to that, he hadn’t taken any steps to look into how to overturn the negative decision on his claim.
- And even after his colleague told him about the reconsideration process, he still didn’t take any steps to request a reconsideration because he was “waiting on the decision” about whether they could get EI benefits in their circumstances²⁶.
- He was also “dealing with a new employment” at that time and all of the other stresses of the pandemic, including the job losses of his family members and “everything that was going on in the world” at the time.
- He also didn’t rush to “do a reconsideration” because so many people had lost their jobs during the pandemic and EI was “so backlogged” that he knew he would probably be waiting a long time for an answer. People in the system weren’t receiving calls back for “months”. He felt his attempt at reconsideration would be “futile” because of the “sheer volume” of the backlog at EI.
- He knew there was a timeframe for requesting a reconsideration, but he thought the timeframe was relative to the backlog and the fact that everything was taking longer than it would in non-pandemic times.
- He “went back and forth” in his mind about whether it was better to seek new employment or appeal the disqualification/misconduct decision.

²⁶ I note this statement is consistent with the Appellant’s statements documented under “Relevant facts” in the Commission’s Record of Decision (at GD3-21).

- But when he found out about the Tribunal's decision "in file number GE-22-1889"²⁷, he decided to "file for reconsideration".
- The Tribunal's decision in GE-22-1889 dealt with similar facts to his, namely being denied EI benefits under a vaccine mandate – and found there was no misconduct that "justified termination".
- He believed the Tribunal's decision in GE-22-1889 would be helpful to him.
- This decision spurred him into action and he filed his Request for Reconsideration.
- "The main thing that spear-headed" him to file his reconsideration was "the understanding that the Tribunal was making favourable decisions similar to my scenario."

[66] The Appellant's testimony shows he didn't form the intention to ask the Commission for a reconsideration until **after December 14, 2022**, which was the date the decision in GE-22-1889 was issued by the Tribunal Member.

[67] This is consistent with what he told the Commission. In its Record of Decision, the Commission noted:

"The client did not complete the request for reconsideration in a timely manner because there was no court decision about the circumstance surrounding their termination. It was not until the December 2022 decision the client felt compelled to have their claim reviewed based on the new developments." (GD3-21)

"Reason for delay: The client did not file a request for reconsideration because they waited until a court decision in December 2022 because the outcome of the decision could potentially change the original decision made." (GD3-21).

²⁷ The Appellant is referring to the decision in *AL v Canada Employment Insurance Commission*, 2022 SST 1428, which was **issued on December 14, 2022** by Tribunal Member Mark Leonard. The claimant in the AL decision argued that the employer breached the collective agreement because mandatory COVID vaccination wasn't part of the collective agreement when she was hired. She also argued she had a right to refuse to get vaccinated. The Tribunal member reversed the Commission's finding of misconduct and said AL was not disentitled to EI benefits. This decision has been appealed.

[68] This is not sufficient to show he had a continuing intention to request a reconsideration during the period of his delay – either the 11 month total delay²⁸, or the delay between the time his colleague told him about the reconsideration process in September or October 2022 and when he filed his Request for Reconsideration on December 29, 2022.

[69] I agree with the Commission that taking steps *after* becoming aware of a case that might potentially assist in changing the original negative decision does not show a continuing intention to request a reconsideration.

[70] For all of these reasons, I find the Appellant has not proven he had a continuing intention to request a reconsideration throughout the period of his delay.

c) Conclusion on the legal test to extend the time for requesting reconsideration

[71] The Appellant has not satisfied the legal test for an extension of time to request a reconsideration of the January 28, 2022 disqualification/misconduct decision.

[72] Having failed to satisfy the required factors, he is not entitled to an extension of time to request a reconsideration of that decision.

[73] This means the decision will not be reconsidered.

²⁸ From the date the decision was communicated on January 28, 2022 until the date he filed his Request for Reconsideration on December 29, 2022.

Conclusion

[74] The appeal is dismissed.

[75] The Appellant's Request for Reconsideration was late, but the Commission did not exercise its discretion properly when it refused to accept it.

[76] However, the Appellant has not met the conditions necessary for the Commission to accept his late reconsideration request. This means an extension of time cannot be granted in his case.

[77] The January 28, 2022 disqualification/misconduct decision will not be reconsidered.

Teresa M. Day
Member, General Division – Employment Insurance Section