



Citation: *SR v Canada Employment Insurance Commission*, 2023 SST 1898

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: S. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (580658) dated April 5, 2023 (issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Videoconference

Hearing date: August 29, 2023

Hearing participant: Appellant

Decision date: September 12, 2023

File number: GE-23-1510

Decision

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

Overview

[2] The Appellant applied for employment insurance (EI) regular benefits. The Commission says there was an error in the start date of his claim. This resulted in an overpayment. The Commission issued a notice of debt on November 6, 2021.

[3] The Appellant asked the Commission to reconsider its decision using a form dated February 22, 2023. The Commission received the request on March 14, 2023. The Commission decided that the request did not meet the requirements of the law. It did so because it decided the request was beyond the 30-day reconsideration period.

Issues

[4] Was the Appellant's request for reconsideration late?

[5] Did the Commission exercise its discretion in a judicial way when it denied the Appellant's request to extend the 30-day period to request reconsideration?

Analysis

Timing of request for reconsideration

[6] A claimant can ask the Commission to reconsider its decision at any time within 30 days after the day the Commission communicates the decision to them.¹

[7] The Commission issued a notice of debt to the Appellant on November 6, 2021. The Appellant testified that he got the notice of debt sometime in December 2021. Even if he got the notice of debt on December 31, 2021, this means that he had until January 30, 2022, to ask the Commission to reconsider its decision.

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

[8] The Appellant asked the Commission to reconsider its decision using a form dated February 22, 2023. Service Canada stamped the request for reconsideration as received on March 14, 2023. So, I find that the Appellant didn't ask the Commission to reconsider its decision within 30 days of when it communicated the initial decision to him.

Exercise of judicial discretion in making reconsideration decision

[9] The Commission can give more time for a request for reconsideration.² To do so, the Commission must be satisfied that there is a reasonable explanation for asking for a longer period. It must also be satisfied that the claimant has demonstrated a continuing intention to request reconsideration.³

[10] The Commission must be satisfied of two more things for requests made after one year. The first is that the request for reconsideration has a reasonable chance of success. The second is that no prejudice would be caused to the Commission by allowing a longer period to make the request.⁴

[11] The Commission's decisions to give more time to request reconsideration are discretionary. I can't change a discretionary decision of the Commission unless the Commission didn't act judicially; in other words, if it didn't act in good faith, having regard to all the relevant factors.⁵

– Did the Appellant give a reasonable explanation for requesting a longer period?

[12] The Appellant gave a reasonable explanation for requesting a longer period to ask the Commission to reconsider its initial decision.

[13] The Appellant applied for EI benefits on December 11, 2020. He testified that he did so online. He explained that everything was fine until May 2021 when he settled

² See section 112(1)(b) of the Act.

³ See section 1(1) of the *Reconsideration Regulations*.

⁴ See section 1(2)(a) of the *Reconsideration Regulations*.

⁵ *Canada (AG) v. Sirois*, A-600-95; *Canada (AG) v. Chartier*, A-42-90).

with his company and cancelled his benefits. Sometime later, he restarted his benefits since he hadn't found a job.

[14] The Commission issued a notice of debt for \$1,719 on November 6, 2021. The reason identified for the debt on the notice is that an overpayment was established due a change in the start date of his benefits.

[15] The Appellant asked the Commission to reconsider the overpayment using a form dated February 22, 2023. On his request for reconsideration, the Appellant said he had spoken to Service Canada about the overpayment and the officer told him that the overpayment would be corrected, and he should not worry about it. He said he had many discussions with Service Canada about the issue.

[16] The Commission says the Appellant has given a reasonable explanation for the delay in requesting reconsideration. It says this because the officer who he spoke to first told him that they would correct the change that resulted in the overpayment. The Commission also says the Appellant got EI benefits after getting the notice of debt and believed the debt wasn't outstanding.

[17] The Appellant testified that he got a call from the Canada Revenue Agency (CRA) trying to collect the debt. He said that up until this time, he believed that the overpayment was going to be corrected.

[18] I have no reason to doubt the Appellant's testimony. He testified in a clear and straightforward way. And his testimony was consistent with his statements to the Commission. So, I accept as fact that he thought the Commission would correct the issue that led to the overpayment. I find that this reasonably explains the delay in asking the Commission to reconsider its decision about the overpayment.

– **Has the Appellant shown a continuing intention to request reconsideration?**

[19] No, the Appellant hasn't shown a continuing intention to request reconsideration.

[20] The Commission says the Appellant hasn't shown a continuing intention to request reconsideration. This is because he got multiple statements of account and

didn't ask questions about them. The Commission says even though he was told of an error that would be resolved, there is no evidence that he contacted the Commission to try and resolve the issue during the lengthy delay.

[21] After the original notice of debt, the Commission sent the Appellant 10 statements of account dated from December 6, 2021, to January 6, 2023. After the Appellant asked the Commission to reconsider the overpayment, it sent one more statement of account dated March 6, 2023.

[22] The Appellant doesn't contest that he got the statements of account the Commission says it sent to him. So, I asked him why he didn't act after receiving each of the statements of account. The Appellant said he just threw them in a drawer.

[23] The Appellant addressed the Commission's submission that he hasn't shown a continuing intention to request reconsideration. He testified that the Service Canada officer he spoke to assured him that the overpayment was a clerical error. He said he relied on what she said.

[24] I have no reason to doubt that the Appellant understood that the error that caused the overpayment would be corrected, as assured by Service Canada. And the Commission agrees that this reasonably explains his delay in requesting reconsideration. But despite this, and because he received a notice of debt and nine statements of account in the approximately 14 months from November 2021 to January 2023, I don't find that the Appellant has shown a continuing intention to request reconsideration.

– **Does the Appellant's request for reconsideration have a reasonable chance of success?**

[25] I find that the Appellant's request for reconsideration has a reasonable chance of success.

[26] The Commission says it established an overpayment due to a change in the start date of the Appellant's claim for benefits. It says the Appellant's last day worked was different than the one originally stated.

[27] The Appellant says his last day of work should be November 11, 2020, and that the letter from his employer terminating his employment and record of employment (ROE) supports this.

[28] The Appellant attached the letter from his employer dated September 16, 2020, to his notice of appeal. It says his employment was terminated effective that day. The Appellant referred to the paragraph in the letter that says his ROE would be issued after his final pay, and that he could apply for EI benefits from Service Canada at that time.

[29] The Appellant attached the ROE to his notice of appeal. It was issued on November 27, 2020. It shows that the last day the Appellant was paid for was November 11, 2020. It also shows insurable hours and earnings through the pay period ending November 21, 2020, and vacation pay, and severance pay amounts.

[30] The Commission didn't comment on the apparent discrepancy between the ROE and the letter the Appellant's employer sent to him. And it doesn't appear from its reconsideration file that the Commission considered the employer's letter and the effect it may have had on the start date of the Appellant's claim; the letter isn't included in the file.

[31] I find that the employer's letter is relevant evidence that the Commission likely didn't consider when it decided that the Appellant's request for reconsideration doesn't have a reasonable chance of success.

[32] I find that the Appellant has an arguable case concerning the overpayment. I don't find that it is plain and obvious on its face that the Appellant's request for reconsideration is bound to fail. This is especially due to the discrepancy in the employer's letter and its ROE, as well as the employer's advice to the Appellant about when he should apply for EI benefits. So, I find that the Appellant's request for reconsideration has a reasonable chance of success.

– **Would there be prejudice to the Commission or a party by allowing a longer period to make the request?**

[33] I don't find that there would be prejudice to the Commission by allowing a longer period to make a request for reconsideration.

[34] The Appellant separated from his job and applied for EI benefits after that. This was just under three years ago. It appears that both the Appellant and the Commission have documents related to the lost job.

[35] The Commission says it would not be prejudiced by allowing the Appellant a longer period to request reconsideration. Even though the Appellant delayed approximately 16 months before asking the Commission to reconsider its decision, I don't find the Commission would be prejudiced by the delay.

– **So, did the Commission exercise its discretion judicially?**

[36] The Commission didn't exercise its discretion judicially. This is because it didn't consider relevant evidence concerning the start date of the Appellant's claim. But, because this relates only to one of the four elements the Commission has to be satisfied of, it doesn't change the Commission's decision not to allow the Appellant more time to request reconsideration.

Conclusion

[37] The appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section