



Citation: *RP v Canada Employment Insurance Commission*, 2024 SST 521

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

## **Decision**

**Appellant:** R. P.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (0) dated January 5, 2024 (issued  
by Service Canada)

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**Tribunal member:** Jean Yves Bastien

**Type of hearing:** In person

**Hearing date:** April 17, 2024

**Hearing participants:** Appellant

**Decision date:** May 11, 2024

**File number:** GE-24-843

## Decision

[1] The appeal is allowed. The Appellant's reconsideration request was late. But the Tribunal finds that the Commission did not exercise its discretion judicially in refusing to accept his reconsideration request.

[2] Therefore the Tribunal finds that the Commission must reconsider its original decision denying the Appellant benefits because he voluntarily left his previous employment. The reasons for this decision follow.

## The Appellant's appeal was returned from the Appeal Division

[3] The Appellant quit his job in March of 2022. He Applied for EI benefits. But the Commission denied him benefits because he had quit his job.

[4] The Appellant got another job in the Summer of 2022. He worked about 300 hours before he was laid off in on November 18, 2022. He applied for EI, but was told he needed more hours to qualify. He thought that his hours from his last job would count.

[5] So, about 30 days later, on December 21, 2022, the Appellant asked the Commission to reconsider its earlier decision of May 18, 2022 denying him benefits.

[6] The Commission decided that the reasons the Appellant gave why his request was late did not meet the requirements of the *Reconsideration Request Regulations (Regulations)*, and it decided not to reconsider its original decision.

[7] The Appellant appealed the Commission's refusal to reconsider his case to the General Division of this Tribunal. A hearing was held on July 5, 2023. The Tribunal dismissed the appeal.

[8] Then the Appellant appealed the General Division's decision to the Appeal Division of this Tribunal. The Appeal Division decided the General Division made a legal error when it used the wrong legal test in three ways.

[9] To fix this error, the Appeal Division ordered the appeal to be returned to the General Division for a new hearing. This decision is a result of that new hearing.

## Overview

[10] The Appellant worked for an employer for 12 years, but he quit his job in March of 2022. He Applied for EI benefits. The Commission denied his application.

[11] The Commission sent a “Notice of Decision” letter to the Appellant on March 18, 2022, explaining why it was denying him benefits. It said that this was because he had quit his job without “just cause”.

[12] But the Commission never told the Appellant that he had been disqualified, or explained what a disqualification means. He was never told that the hours he had accumulated to that point could not be used to qualify for future benefits.

[13] If you quit your job without just cause, the Law says that you can’t get EI benefits. It also says that you can’t use the hours that you have accumulated before you quit your job, to make any EI claims later on.<sup>1</sup>

[14] The Commission’s “Notice of Decision” letter goes on to say that “to receive regular benefits after voluntarily leaving your employment without just cause, you must accumulate additional hours of insurable employment.”<sup>2</sup>

[15] So, in the Summer of 2022 the Appellant got another job so that he could “accumulate additional hours of insurable employment”. He worked about 300 hours before he was laid off on November 18, 2022. He applied for EI but was told he needed more hours to qualify. He thought that his hours from his last job would count.

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<sup>1</sup> See section 30(5)(a) of *the Employment Insurance Act (Act)*.

<sup>2</sup> See page GD3-15 of the appeal record.

[16] The Appellant says that he didn't know that when you quit a job, you can't use the (insurable) hours you had accumulated up to that point in any subsequent EI claims that may come up.<sup>3</sup>

[17] So on December 21, 2022, the Appellant asked the Commission to reconsider their decision of May 2022 in the hope that they would decide that he did have just cause to have quit his job in March 2022, and then, that he could add the hours from this earlier job to qualify for EI.

[18] The Commission says the Claimant made his reconsideration request 188 days after the original decision. The Commission says the Appellant hasn't shown a continuing intention to ask for a reconsideration. This is a requirement of Section 1(1) of the *Reconsideration Request Regulations*.

## Issues

The Tribunal must determine the following issues:

- Was the Appellant's reconsideration request submitted late?
- Was the Commission's decision to deny an extension of time to request reconsideration exercised judicially?
- If not, what decision should the Commission have given?

## Analysis

[19] 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.<sup>1</sup>

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<sup>3</sup> See section 30(5)(a) of the *Employment Insurance Act (Act)*.

[20] If you wait more than 30 days to ask for a reconsideration, you are late. The Commission has to decide whether it will accept your late reconsideration request. The *Reconsideration Request Regulations (Regulations)* are part of the *Employment Insurance Act (Act)* and they lay out the rules for the Commission when it comes to considering allowing longer periods for a reconsideration.

[21] When the Commission looks at a late reconsideration request, first it looks at the “general circumstances” and asks two questions:

- Do you have a reasonable explanation for being late?
- Have you shown that you always meant to ask for a reconsideration, even though you were late?<sup>4</sup>

[22] If there are any “particular circumstances”, like if a person has submitted another application for EI benefits after the Commission notifies them about its original decision (as is the case for the Appellant), then the Commission has to look at two extra questions:

- Does your reconsideration request have a reasonable chance of success?
- Would there be prejudice to the Commission or any other party if the Commission accepted the late reconsideration request.<sup>5</sup>

[23] The Commission can only accept the late reconsideration request if the answer is “yes” to the first three questions, and “no” to the fourth. This means that you have to meet all four conditions for the Commission to accept a late reconsideration request.

[24] The Commission makes its own decisions about accepting or refusing late reconsideration requests. This is called a discretionary power.<sup>6</sup>

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<sup>4</sup> Subsection 1(1) of the *Regulations*. The Commission will consider whether the claimant has a reasonable explanation for the delay and whether the claimant demonstrated a continuing intention to request a reconsideration.

<sup>5</sup> Subsection 1(2) of the *Regulations*.

<sup>6</sup> I have decided that the Commission's power is discretionary because under the old legislation and looking at a similar part of the law, the Federal Court of Appeal decided that the Commission's power to refuse or accept a late request was discretionary. The Federal Court of Appeal made this decision in *Canada (Attorney General) v. Knowler*, A-445-95.

[25] Even though the Commission has this discretionary power, it must make its decision fairly. The Commission must look at all of the information when it makes a decision. The Commission should pay attention to important information about why someone was late and ignore things that are not important.<sup>7</sup>

[26] The Tribunal must respect the Commission's discretionary power. Usually this means that the Tribunal cannot change the Commission's decision. However, if the Commission did not make its decision fairly, then the Tribunal can step into the Commission's role and make the decision that it should have made.

### **Was the Appellant's reconsideration request late?**

[27] Yes, the Claimant's reconsideration request was late.

[28] This is because the law says you have 30 days after the Commission communicates its decision to ask for a reconsideration. The Commission told the Appellant about its decision in a letter to him dated May 18, 2022. But the Appellant only asked for a reconsideration 188 days later, on December 21, 2022.

[29] The Appellant doesn't dispute these dates, or that his request was 158 days late, so I accept it as fact.

### **Did the Commission exercise its discretion judicially (fairly)?**

[30] Neither the *Act*, nor the *Employment Insurance Regulations (Regulations)*, define how a discretionary power is exercised judicially (fairly). Therefore, the Tribunal considered that a discretionary power is not exercised judicially if it can be established that the decision maker (1) acted in bad faith; (2) acted for an improper purpose or motive; (3) took into account an irrelevant factor; (4) ignored a relevant factor; or (5) acted in a discriminatory manner<sup>8</sup>.

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<sup>7</sup> In *Canada (Attorney General) v. Purcell*, A-694-94, the Federal Court of Appeal states that the Commission must consider all relevant factors, ignore irrelevant factors, act in good faith, and act in a manner that is not discriminatory.

<sup>8</sup> See *Canada (Attorney General) v. Purcell*, A-694-94

[31] The Appellant argues that the Commission did not exercise their discretion fairly because it ignored the following relevant factors:

- The Commission failed to make representations to the Tribunal on whether or not the Appellant had a reasonable explanation for the delay.
- The Appellant was never informed about his disqualification.
- The Appellant's notice of decision only indicated that he needed to work "additional" hours.
- The Appellant enquired in person at his SCC and spoke with staff who repeated that he had to work "additional" hours, not that he had been disqualified.
- The Commission officer questioning the Appellant only asked one question, and when the Appellant provided an answer, the Commission officer failed to enquire why the Appellant felt this way. His questioning was not sufficiently probative.
- The Commission failed to consider the Appellant's argument that he applied soon after he realized that he had been disqualified.

[32] The Commission admits in its Representations that: "In this case, the Commission must consider the requirements of subsections 1(1) and 1(2)(b) of the Reconsideration Regulations, however, it appears that the reconsideration officer only considered Regulation 1(1) at the time of the decision (GD3-36)." <sup>9</sup>

[33] I find that the Commission **failed to exercise** its discretion fairly (judicially) because it failed to properly apply the legal test as set out in the Reconsideration Request Regulations. (They only considered 2 factors when they should have considered 4 factors.)

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<sup>9</sup> See page GD4-2 of the appeal record.

[34] Since the Commission failed to act “judicially” when making its decision, The Tribunal is able to step into the shoes of the Commission to address each of the four factors laid out in the Regulation and decide whether the Commission must reconsider its original decision.

### **General Circumstances – Section 1(1)**

#### **– Did the Appellant have a reasonable explanation for the delay?**

[35] The Reconsideration Request Regulations say that the Commission may allow a longer period to make a request for Reconsideration if there is a reasonable reason for doing so, (**and** demonstrates a continuing intention to request a reconsideration)

[36] On December 21, 2022, the Appellant submitted a request for reconsideration indicating that his reasons for the delay in making the request for reconsideration was that he had found work with a new employer (GD3-32 to GD3-33). The Appellant explained that he thought if he worked with a new employer and was subsequently laid off, the hours from the former employer would be counted as well. The claimant did not think he needed to ask for a reconsideration because of this assumption.

[37] The Commission considered the claimant’s explanation for the delay and determined that it did not meet the requirements of the *Reconsideration Regulations*. Consequently, the Commission notified the claimant that it would not be reconsidering its decision (GD3-35 and GD3-37 to GD3-38).

[38] But a review of the Appellant’s reconsideration file (GD3) reveals that on January 17, 2023, a Commission officer did ask the Appellant if he had a reasonable explanation for his delay.”<sup>10</sup> The appellant told the Commission officer that he thought that his hours working at the previous employer would count.

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<sup>10</sup> See page GD3-34 of the appeal record.

[39] However, it appears from reviewing the file provided to the Tribunal that it wasn't until the Commission officer was speaking to the Appellant on January 17, 2023, that the Commission informed him that: "the hours from his previous employer would not be able to be used to establish a claim ... because of the disqualification for quitting that employment."<sup>11</sup>

[40] But the Commission officer didn't ask the Appellant **why** he thought that his hours would count. He simply corrected the Appellant and told him: "you were advised that the hours from [past employer] would not be used ...."<sup>12</sup> He didn't ask the Appellant any other questions, or seek any explanations about why the Appellant might have delayed applying for a reconsideration.

[41] The Commission argues that: "The claimant was issued with a notice of disqualification dated March 18, 2022".<sup>13</sup> But that's not the case. The Appellant only received a "Notice of Decision" dated May 18, 2022.<sup>14</sup> This letter only says "To receive regular benefits after voluntarily leaving your employment without just cause, you must accumulate **additional hours** of insurable employment. If you become unemployed again and want to receive regular benefits in the future, you will have to file a new claim."<sup>15</sup> The letter doesn't mention anything about disqualification or that the Appellant would have to start from zero and reaccumulate the entire amount of insurable hours needed to qualify.

[42] The Appellant testified that he went to his local Service Canada Centre (SCC) and enquired about this matter in person. The Appellant says that staff at the SCC confirmed that, yes, he needed to accumulate **additional hours**. So, that's what the Appellant did. He obtained a job with another company.

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<sup>11</sup> See page GD3-34 of the appeal record.

<sup>12</sup> See page GD3-34 of the appeal record.

<sup>13</sup> See page GD4-1 of the appeal record.

<sup>14</sup> See page GD3-15 of the appeal record.

<sup>15</sup> See page GD3-15 of the appeal record.

[43] The Commission didn't provide any Supplementary Records of Claim, or any other records to the Tribunal concerning the Appellant's in-person interactions with Service Canada Staff. So the Tribunal is unable to verify the Commission's version of the Appellant's visits to his Service Canada Centre.

[44] The Appellant was clearly told that because he left his job without just cause, he must accumulate "additional hours". But there is nothing in either the Commission's reconsideration file, or its Representations to the Tribunal, that specifically proves that the Appellant was made aware that he had been **disqualified from benefits**. The Appellant was never directly told that he could not use his hours from the job he left in March of 2022 until the call with the Commission officer on January 17, 2023. The Appellant says that otherwise he would have applied for a reconsideration immediately.

[45] The Appellant didn't know that quitting his job in March 2022, "cancelled" **all** of the qualifying hours that he had accumulated working for his past employer. He didn't understand that he had to start over from scratch, and once again accumulate all of the hours needed to qualify. The Appellant testified that he thought that he just had to work and accumulate "more" hours, which is what he did.

[46] On November 18, 2022, the Appellant made a subsequent application for EI benefits. The Appellant testified that it was only when his application was rejected that he was informed that he had been disqualified, and that he couldn't use any of his past insurable hours to qualify for benefits.

[47] The Tribunal finds the Appellant credible, and it believes him when he says that he thought that he was doing the right thing by obtaining a subsequent job, and accumulating additional insurable hours. The Tribunal also believes the Appellant when he says that he didn't apply for a reconsideration earlier because he didn't believe that there was any reason to do so.

[48] The Appellant believed that he was doing everything that Service Canada had told him to do. The Appellant was under the misapprehension that he had no reason to ask for a reconsideration.

[49] The Appellant testified that once he realized what the situation was, he promptly went to his local Service Canada Centre in person, and made application for a reconsideration. The Appellant says that he didn't delay once he knew what was going on.

[50] While it is true that the Appellant could theoretically have applied for reconsideration in May 2022, after his initial application for EI benefits was refused, the Tribunal accepts the Appellant's arguments and finds it more likely than not that his failure to submit his request for reconsideration on time was based on the lack of relevant information – the implications of a disqualification for voluntarily leaving.

[51] Therefore I find that it is more likely than not that the Appellant has a reasonable explanation for his delay.

– **Continuing Intention to request a Reconsideration**

[52] The *Reconsideration Request Regulations* also say that in addition to having a reasonable explanation for the delay, the Commission may allow a longer period to make a request for Reconsideration if the person has demonstrated a continuing intention to request a reconsideration.

[53] As discussed above, the Appellant was informed shortly after making his application for benefits on November 18, 2022, that he did not qualify for benefits on account of his earlier disqualification. The Appellant made his Request for Reconsideration on December 21, 2022 based on the rejection of his November application for benefits.

[54] The Tribunal finds that the Appellant had a continuing intention to request a reconsideration from shortly after November 18, 2022, until he made application on December 21, 2023. The Tribunal also finds it more likely than not that this request was made within the prescribed 30-day window.

**Particular Circumstances****– Does the request for reconsideration have a reasonable chance of success?**

[55] The Commission considered this question in its representations to the Tribunal. It said that “it cannot argue that that there is no chance of success.”<sup>16</sup>

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

[56] The Commission has examined this issue and in its representations to the Tribunal it says: “the Commission argues that there would be a minimal chance of prejudice against the Commission by allowing [the Appellant] a longer period to make a request.”<sup>17</sup>

[57] So, there are no “particular circumstances” that would prevent giving the Appellant additional time to request a reconsideration.

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<sup>16</sup> See page GD4-3 of the appeal record.

<sup>17</sup> See page GD4-3 of the appeal record.

## **Conclusion**

[58] The Appellant's request for reconsideration was late, but the Tribunal finds that he met all four conditions for the Commission to accept his late reconsideration request.

[59] The Tribunal finds that the Commission failed to exercise its discretion judicially. Because of this the Tribunal has stepped in, and re-examined the Appellant's appeal.

[60] The Tribunal finds that an extension of time to request reconsideration is warranted.

[61] The appeal is allowed.

Jean Yves Bastien  
Member, General Division – Employment Insurance Section