



[TRANSLATION]

Citation: *CE v Canada Employment Insurance Commission*, 2024 SST 652

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

Decision

Appellant: C. E.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (645103) dated February 20,
2024 (issued by Service Canada)

Tribunal member: Manon Sauvé
Type of hearing: In person
Hearing date: May 14, 2024
Hearing participant: The Appellant
Decision date: May 21, 2024
File number: GE-24-1028

Decision

[1] The appeal is allowed. The Appellant didn't receive the Commission's decision. He could not make his reconsideration request on time.

[2] Even if the Appellant had received the decision, the Commission didn't exercise its discretion properly when it refused the request for an extension of time.

Overview

[3] The Appellant is of Haitian descent. He speaks French, but understands Creole better. He had help completing his application for benefits and reconsideration request.

[4] On December 14, 2022, the Appellant applied for Employment Insurance (EI) benefits. On March 28, 2023, the Commission refused to pay him benefits because he voluntarily left his job at X on October 14, 2022.

[5] On January 22, 2024, the Appellant asked the Commission to reconsider the decision, saying that he had applied for jobs.

[6] The Commission can extend the reconsideration period beyond the 30 days set out in the *Employment Insurance Act*. The Appellant has to show that he had a reasonable explanation for the delay and a continuing intention to request a reconsideration.

[7] The Commission says that the Appellant received the decision. He didn't give the Commission a reasonable explanation or show a continuing intention to request a reconsideration.

[8] The Appellant says that he didn't receive the Commission's decisions. He was only informed verbally. If he had received the decisions, he would have asked for the usual help to understand the situation. This is what he did when he received the Commission's decision following reconsideration requests—he got help and requested a reconsideration.

Issues

1. Was the reconsideration request made late?
2. Did the Commission exercise its discretion properly when it denied the Claimant an extension of the 30-day period to request a reconsideration?

Analysis

[9] Any person who is the subject of a decision of the Commission may request a reconsideration of that decision within 30 days after the day the decision is communicated to them, or within any further time that the Commission may allow.¹

[10] The Commission's decision to give more time to request a reconsideration is a discretionary power.² The Commission's discretion must be exercised in accordance with the criteria in the *Reconsideration Request Regulations*. The Commission can give a claimant more time to request a reconsideration if it is satisfied that there is a reasonable explanation for requesting a longer period and the claimant has shown a continuing intention to request a reconsideration.³

[11] In addition, when the request is made more than one year after the initial decision, the Commission must be satisfied that the reconsideration request has a reasonable chance of success and would not cause prejudice.⁴

[12] I have to decide whether, in denying an extension of time to request a reconsideration, the Commission acted in good faith, with proper purpose and motive, considered all relevant factors, ignored any irrelevant factors, and acted in a non-discriminatory manner.⁵

¹ Section 112(1) of the *Employment Insurance Act*

² *Daley v Canada (Attorney General)*, 2017 FC 297

³ Section 1(1) of the *Reconsideration Request Regulations*

⁴ Section 1(2) of the *Reconsideration Request Regulations*

⁵ *Canada (Attorney General) v Sirois*, A-600-95; *Canada (Attorney General) v Purcell*, A-694-9

[13] I can intervene only if I find that the Commission didn't exercise its discretion judicially. If I find that it didn't exercise its discretion properly, then I will give the decision that the Commission should have given.

Was the reconsideration request made late?

[14] I note that the Commission found that the Appellant's reconsideration request was made late because he confirmed that he had received a response during a phone call.

[15] I understand that the Appellant stopped working on December 14, 2022, to get EI regular benefits. He had help completing his application.

[16] On March 23, 2023, the Commission decided that the Appellant wasn't entitled to EI benefits because he voluntarily left his job at X on October 14, 2022.

[17] The Appellant agrees that he got a call. But he didn't receive the March 23, 2023, letter. Mail was stolen from his building's mailboxes. The letter may have been stolen. So, he didn't know he had 30 days to challenge the decision.

[18] Assisted by a Creole interpreter, the Appellant testified that he didn't know he had 30 days to challenge the decision. He didn't receive the letter about the Commission's decision.

[19] When he was informed of his rights, he immediately consulted a family member for help. He always does this because he knows he needs help understanding information.

[20] When he made a new claim for benefits in November 2023, he was informed that he wasn't entitled to benefits. He got a letter. He showed it to his uncle, who told him he could ask for a reconsideration. This is what he did.

[21] On February 20, 2024, the Commission decided that the Appellant's request was late and that he hadn't given a reasonable explanation for the delay or shown a continuing intention to challenge the decision.

[22] After receiving the decision, the Appellant filed a notice of appeal with the Tribunal on March 12, 2024. He also asked for help completing his requests.

[23] In the circumstances, I am of the view that it is more likely that the Appellant didn't receive the March 23, 2023, letter. So, he could not have known he had 30 days.

[24] In coming to this conclusion, I considered the Appellant's credible testimony. The Appellant also has language challenges. He needs help filling out forms or support from an interpreter.

[25] Even if the Appellant had received the letter, I am not convinced that he could understand its consequences without help.

Did the Commission exercise its discretion properly when it denied the Claimant an extension of the 30-day period to request a reconsideration?

[26] In my view, the Commission didn't exercise its discretion properly because it should have considered the Appellant's challenges understanding the written word and the language spoken.

[27] The Appellant initially asked for a hearing in writing. I told the Appellant that he could change the type of hearing if it was too difficult. He eventually opted for an in-person hearing with a Creole interpreter. So, when the Appellant understands the issues, he asks for appropriate help.

Conclusion

[28] The Commission hasn't proven that the Appellant received the March 23, 2023, decision. Even if that were the case, the Commission didn't exercise its discretion properly when it refused the reconsideration request.

[29] The appeal is allowed.

Manon Sauvé
Member, General Division – Employment Insurance Section