



Citation: *CS v Canada Employment Insurance Commission*, 2024 SST 709

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

## Decision

**Appellant:** C. S.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (642446) dated January 30, 2024 (issued by Service Canada)

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**Tribunal member:** Peter Mancini  
**Type of hearing:** Teleconference  
**Hearing date:** March 20, 2024  
**Hearing participant:** Appellant  
**Decision date:** April 11, 2024  
**File number:** GE-24-621

## Decision

[1] The appeal is dismissed. The Appellant has not proven<sup>1</sup> that she should have more time to ask the Commission to reconsider its initial decision that the Appellant lost her job as a result of her misconduct.

## Overview

[2] The Commission decided that the Appellant lost her job due to misconduct and didn't qualify for benefits. The Appellant disagrees with this decision. The Appellant was late in asking for a reconsideration of the decision, so needed to get an extension of time from the Commission. The Commission refused to give the Appellant more time because they found that her explanation that she did not read the paragraph in the letter advising her of the timeline involving a reconsideration request was not a reasonable explanation for her delay.

[3] The Appellant disagrees and says that there were several reasons she delayed requesting a reconsideration of the decision. When she filed her notice of reconsideration, she said she had not received the letter which outline the denial of her claim because she had moved. She later said she received the letter but didn't read the last paragraph. She said during the appeal hearing that she was given misinformation from the Commission, or misinterpreted information from the Commission regarding the reconsideration timeline.

[4] I must decide whether the Commission made its decision correctly when it refused to give the Appellant more time to get a reconsideration of its decision. If it did, then the Commission's decision stands. If it did not, then I have to step into the Commission's shoes and make the decision that it should have made.

## Matter I have to consider first.

[5] The hearing of this matter was scheduled for March 6<sup>th</sup>, 2024. The Notice of Hearing had been sent to the parties and I convened the hearing at the appointed time.

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<sup>1</sup> The Appellant has to prove this on a balance of probabilities, which means it is more likely than not.

The Appellant sent an email on the evening before the hearing, advising that she would not be attending, as she had a medical appointment. The email was not posted until the day of the hearing, and I was not aware of the Appellant's email. I waited to see if the Appellant would join the hearing. The Tribunal help line phoned the Appellant and left two messages for her. When she failed to attend, I decided to conduct the hearing in her absence, however I was then made aware of her e-mail, and rather than conduct the hearing on March 6th, I adjourned the hearing to March 20<sup>th</sup>, 2024. I do not think the Appellant or Respondent was prejudiced by this decision.

## Issue

[6] Did the Commission make its decision correctly when it refused to give the Appellant more time to ask for a reconsideration of its decision that denied her benefits due to her misconduct? If not, I will step into the Commission's shoes and make the decision that it should have made.

## Analysis

[7] Appellants have 30 days to ask the Commission to reconsider a decision.<sup>2</sup> If Appellants miss this deadline, the Commission has the power to give them an extension of time.<sup>3</sup>

[8] The law sets out factors that the Commission has to consider when deciding whether Appellants can have more time to ask for a reconsideration decision.<sup>4</sup> All Appellants asking for more time have to show:

- A reasonable explanation for asking for more time.
- A continuing intention to ask for a reconsideration<sup>5</sup>

Sometimes, Appellants also have to show:

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<sup>2</sup> Paragraph 112 (1)(a) of the *Employment Insurance Act*.

<sup>3</sup> Paragraph 112 (1)(b) of the *Employment Insurance Act*.

<sup>4</sup> Section 1 of the *Reconsideration Request Regulations*.

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

- A reasonable chance of success
- It would not be unfair<sup>6</sup> to allow a longer period<sup>7</sup>

[9] One of the reasons why Appellants have to meet all four factors is because they asked for the reconsideration more than 365 days after the Commission told them of the decision OR made a new application for benefits after the Commission told them about the decision OR asked the Commission to rescind or amend that same decision they want reconsidered.

[10] The Commission says, in its submissions that those 4 factors do not apply in this case. The Commission need only consider the first two factors set out in paragraph 8. This is because the request for reconsideration was not more than 365 days after the Commission told the Appellant of the decision, no new application for benefits was filed, and no request was made to the Commission to rescind or amend the same decision they want reconsidered.

[11] I do not agree with the Commission that only two factors apply; those being the first two factors set out in paragraph 8 of this decision, the two factors set out in regulation 1(1) of the Act. It is important to note that the Appellant filed a new application for benefits (sickness benefits) after she received the letter denying her application for regular benefits, so I find that the other factors set out in paragraph 8 of this decision, those in regulation 1(2) should have been considered by the Commission when assessing the Appellant's request.

[12] I find the Commission was aware of the fact that the Appellant filed a new application for benefits after receiving her letter of denial. In the record of decision, the agent for the Commission asked whether or not the Appellant's sickness prevented her from submitting the request for reconsideration.<sup>8</sup>

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<sup>6</sup> Unfairness in subsection 1(2) of the *Reconsideration Request Regulations* refers to whether allowing an extension of time would cause prejudice.

<sup>7</sup> Subsection 1(2) of the *Reconsideration Request Regulations*.

<sup>8</sup> GD 3-20

**[13] Did the Commission make its decision correctly when it refused the Appellant's request?**

[14] The Commission's decision whether to give the Appellant more time is discretionary.<sup>9</sup> This means that it is open to the Commission to decide whether or not the Appellant has met the requirements to get the extension. I have to look at *how* the Commission exercised its discretion; that is, I am looking at the way that the Commission made the decision, rather than the decision itself.

[15] I cannot step into the Commission shoes and decide whether I think that the Appellant should be given more time unless I first decide that the Commission did not exercise its discretion correctly when it refused to extend the time.<sup>10</sup>

[16] The Appellant has to prove that<sup>11</sup> the Commission did not exercise its discretion correctly.

[17] The Commission says that it exercised its discretion correctly when it decided not to allow an extension of time. The Appellant says that the Commission did not make the decision correctly, and I agree with the Appellant. The Commission should have looked at all four factors contained in the regulations, not just the first two. This is because the Appellant filed a new application for benefits after receiving her denial of benefits on her initial application.

[18] I have found one way in which the Commission did not make its decision properly. It only takes one mistake before I have to step into the Commission's shoes and make the decision that it should have made.

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<sup>9</sup> *Canada (Attorney General) v Daley*, 2017 FC 297.

<sup>10</sup> The Commission's decision can only be interfered with if it exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it: *Canada (Attorney General) v Tong*, 2003 FCA 281. Discretion is exercised in a non-judicial manner if the decision-maker acted in bad faith, or for an improper purpose or motive, took into account in irrelevant factor or ignored a relevant factor or acted in a discriminatory manner: *Attorney General of Canada v Purcell*, A-694-94.

<sup>11</sup> The Appellant has to prove this on a balance of probabilities which means it is more likely than not.

[19] Before I step into the Commission's shoes, I would like to explain an important point. My job now is to make the decision properly. This does not necessarily mean that I will arrive at a different outcome, as far as whether the Appellant should get more time. Rather, it means that I will make the decision in the correct way. I will move through each of the factors in order and decide whether the Appellant has met them.

### **A REASONABLE EXPLANATION FOR ASKING FOR MORE TIME.**

[20] The Appellant filed for regular benefits on June 18<sup>th</sup>, 2023. By way of a letter dated July 10<sup>th</sup>, 2023, the Appellant was informed that she was denied benefits from June 18<sup>th</sup>, 2023, because in the Commission's opinion she lost her job due to her misconduct. Paragraph 6 of that letter explains how to file a request for a formal reconsideration of the decision. The information advising the Appellant that the reconsideration request had to be filed within 30 days from the date of the letter is in bold lettering.

[21] The Appellant then applied for and was approved for sickness benefits which were paid from August 20<sup>th</sup>, 2023, until December 23, 2023.

[22] Once those sickness benefits ended, the Appellant filed a request for reconsideration of her denial of regular benefits. She did this in January 2024. The request itself is dated January 4<sup>th</sup>, 2024. It is stamped received by the Commission on January 15<sup>th</sup>, 2024. This was well past the 30-day time period to file a request for reconsideration as set out in the E.I. Act.

[23] In her request for reconsideration the Appellant argued that in June of 2023 she was let go from work due to medical issues, not misconduct. She said she did not receive the letter of reconsideration because she had moved.

[24] The Commission provided evidence of a conversation that took place between the Appellant and a Service Canada worker on February 3<sup>rd</sup>, 2024. In that conversation, the Appellant changed her story, and said she did receive the letter, before she moved, and had been advised of the Commission's position orally before she received the letter. When asked why she didn't file her reconsideration request

earlier, she said she did not read the paragraph of the letter containing the timeline information. She confirmed that her receipt of sickness benefits did not prevent her from submitting the request for reconsideration.<sup>12</sup>

[25] The Commission found that not reading the letter she received from the Commission outlining her options to request a reconsideration was not a reasonable reason to extend the time for filing a reconsideration request.

[26] During the hearing the Appellant said she was given misinformation from the Commission. She said she was told that she could apply for reconsideration and the decision would be given in 30 days, not that she had 30 days to apply for reconsideration. She said initially this was in November of 2023, and that she made a note of the conversation, but she does not have the note. She said she told the individual who advised her of the decision to deny the reconsideration request about her misinformation. She said she told him this in January 2024.

[27] The Appellant, when questioned, said she may have received the misinformation from the Commission when she spoke to an individual in July 2023, when she was told of the denial of benefits. She said she spoke to someone in July and again in November of 2023. The misinformation could have come from one or both calls. The Appellant was unsure.

[28] There are different explanations offered by the Appellant as to why the request for reconsideration was so late. The explanations changed over time. Because the Appellant has offered different reasons why she failed to apply for a reconsideration within the required time period I do not find her evidence reliable when considering this factor. I find there was no reasonable explanation offered by the Appellant for asking for more time.

**HAS THE APPELLANT SHOWN A CONTINUING INTENTION TO ASK FOR A RECONSIDERATION.**

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<sup>12</sup> GD 3-18

[29] The Appellant has not shown a continuing intention to ask for a reconsideration. The Appellant said to the Commission that her sickness did not prevent her from filing a request for reconsideration. The Appellant said she spoke with an Agent regarding her request for reconsideration some time in July (when she received the oral notice of denial) and/ or November of 2023 but she has no notes about these conversations available to produce to the Tribunal. She received her denial of regular benefits in July of 2023, and says she raised the issue with the Commission in a conversation 4 months later in November. She filed her notice of reconsideration in January of 2024. I find the evidence of the Appellant regarding the November discussion with the Commission unreliable and am not convinced it took place. But even if it did, I find that one conversation with the Commission between July 2023 and January 2024 does not show a continuing intention to ask for a reconsideration.

**HAS THE APPELLANT SHOWN THE REQUEST FOR RECONSIDERATION HAS A REASONABLE CHANCE OF SUCCESS**

[30] Neither the Appellant nor the Commission provided any information concerning the Appellant's application for regular benefits. The Appellant says in her request for reconsideration that she was let go from work due to a double infection and that she provided the Employer with a doctor's note. The Commission says that the Appellant was let go due to misconduct. In the absence of any other information, I cannot say that the Appellant has shown a reasonable chance of success.

**HAS THE APPELLANT SHOWN THAT THERE WOULD BE NO PREJUDICE CAUSED TO THE COMMISSION OR A PARTY BY ALLOWING A LONGER PERIOD TO MAKE THE REQUEST.**

[31] The Appellant has offered no evidence that there would be no prejudice caused to the Commission or a party by allowing a longer period to make the request.

[32] I have considered all four factors that the Commission should have considered when making its decision. I find that the Appellant has not proven on the balance of probabilities that she had a reasonable explanation for requesting a longer period for



her request for reconsideration; nor that she demonstrated a continuing intention to request a reconsideration, as required by section 1 (1) of the regulations. Additionally, I have no evidence that would indicate that there would be no prejudice caused to the Commission or a party by allowing a longer period to make the request; nor do I have evidence that there was a reasonable chance of success if the reconsideration request was granted.

## **Conclusion**

[33] The appeal is dismissed.

Peter Mancini

Member, General Division – Employment Insurance Section