



[TRANSLATION]

Citation: *AM v Canada Employment Insurance Commission*, 2024 SST 879

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

**Decision**

**Appellant:** A. M.  
**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (0) dated May 7, 2024 (issued  
by Service Canada)

---

**Tribunal member:** Manon Sauvé  
**Type of hearing:** Teleconference  
**Hearing date:** July 23, 2024  
**Hearing participant:** Appellant  
**Decision date:** July 25, 2024  
**File number:** GE-24-1793

## Decision

[1] The appeal is allowed. The Commission didn't have all the information when it decided to deny the Appellant's request for an extension of time.

## Overview

[2] During the COVID-19 pandemic, the Appellant applied for the Canada Emergency Response Benefit (CERB).

[3] The Commission told the Appellant that the banking information provided was incorrect. It wasn't able to deposit the CERB, including a \$2,000 advance, into his account. It then sent him a cheque by mail.

[4] The following year, the Appellant noticed that the Commission had issued a tax slip for the \$2,000 advance. He contacted the fraud department because he hadn't deposited the \$2,000 cheque. He was told that an investigation would be made to determine whether the cheque had been cashed.

[5] While he believed that the situation would be resolved, the Appellant received a notice of debt. The Commission was asking him to repay the \$2,000 advance. The Appellant was told that he had to ask it to reconsider.

[6] The Commission refused to reconsider the decision because the Appellant hadn't given a reasonable explanation for being late or shown that he intended to challenge it. The Commission was unable to get his explanation for being late or information about the efforts he was making.

[7] The Commission considers that it used its discretion properly when it refused the extension of time to appeal.

[8] The Appellant disagrees. He contacted the fraud department and the Commission.

## Issues

1. Was the reconsideration request made late?
2. Did the Commission exercise its discretion judicially when it denied the Appellant's request to extend the 30-day period to ask for it to reconsider?

## Analysis

[9] Any person who is the subject of a decision of the Commission may ask for 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.<sup>1</sup>

[10] The Commission's decision to give more time to ask for a reconsideration is a discretionary power.<sup>2</sup> The Commission's discretion has to be exercised in accordance with the criteria in the *Reconsideration Request Regulations*.

[11] The Commission can give a claimant more time to make a reconsideration request if it is satisfied that there is a reasonable explanation for requesting a longer period and the appellant has demonstrated a continuing intention to ask for a reconsideration.<sup>3</sup>

[12] 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.<sup>4</sup>

[13] I have to decide whether, in denying an extension of time to ask for 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.<sup>5</sup>

---

<sup>1</sup> Section 112(1) of the *Employment Insurance Act*.

<sup>2</sup> *Daley v Canada (Attorney General)*, 2017 FC 297.

<sup>3</sup> Section 1(1) of the *Reconsideration Regulations*.

<sup>4</sup> Section 1(2) of the *Reconsideration Regulations*.

<sup>5</sup> *Canada (Attorney General) v Sirois*, A-600-95; and *Canada (Attorney General) v Purcell*, A-694-9.

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

**1. Was the reconsideration request made late?**

[15] Yes. The Appellant's reconsideration request was late. He received the notice of account on May 7, 2022. He asked for the decision to be reconsidered on December 8, 2022. The delay is 202 days.

**2. Did the Commission exercise its discretion judicially when it denied the Appellant's request to extend the 30-day period to ask for it to reconsider?**

[16] I find that there was a delay of 202 days. So, the Commission had to decide on the extension of time based on the first two criteria: a) a reasonable explanation; and b) a continuing intention to ask for a reconsideration.

**a) A reasonable explanation**

[17] I understand that the Appellant applied for Employment Insurance (EI) benefits on March 25, 2020. At that time, the EI rules had changed because of the COVID-19 pandemic. This means that claims for EI regular benefits were converted to the CERB.

[18] During this period, the Commission paid advances of \$2,000, the equivalent of four weeks of benefits, to help Canadians quickly. This was the case with the Appellant.

[19] On March 30, 2020, the Commission told the Appellant that the bank account information that was provided was incorrect. Since the Commission was unable to make the deposit, it sent him a cheque for \$2,000.

[20] On February 24, 2021, the Appellant contacted the Commission for information about a T4 for 2020. The communication was interrupted.

[21] On May 7, 2022, the Commission sent the Appellant a notice of debt for the \$2,000 advance.

[22] On November 24, 2022, the Appellant contacted the Commission about the notice of debt. He said he didn't need the \$2,000 advance. He didn't cash the cheque and didn't know where it was. In a previous call, it was recommended that he contact the fraud department. That is what he did.

[23] The Appellant asked for a reconsideration on December 7, 2022. He said that he received the decision on September 5, 2022.

[24] The Commission tried to reach the Appellant on September 27, 2023. It left a voicemail message. On September 29, 2023, the Appellant ended the call with the Commission. On October 3, 2023, the Commission tried to reach the Appellant again but was unsuccessful. On October 3, 2023, it made a decision without getting the Appellant's explanations. The Commission refused to reconsider the decision.

[25] The Commission says that the Appellant hasn't given a reasonable explanation for the delay. He didn't give the Commission an explanation.

[26] The Appellant says that he wasn't able to answer the calls because he was working in a sugar shack. It was difficult for him to contact the Commission. He is also unfamiliar with technology and ways of communicating.

[27] The Appellant also says that he contacted the Commission when he received a tax slip. He then filed a complaint with the fraud department, since he never cashed the cheque.

[28] The Appellant was finally told that the cheque was cashed in August 2020. The bank account used to make the transaction didn't belong to him.

[29] Also, since he filed a complaint with the fraud department, he thought the investigation would lead to the debt being written off. He didn't think he also needed to ask for a reconsideration.

[30] I understand the Commission's decision, since it didn't have an explanation. Since I got the Appellant's explanation, which has remained the same throughout the

appeal process, I am satisfied that it is reasonable. This is a new fact that I considered in making my decision.

**b) Continuing intention to ask for a reconsideration**

[31] I note that, in 2021, the Appellant asked about the tax slip issued for the CERB. He wasn't able to complete the process. The Appellant thought the situation was resolved because he didn't cash the cheque.

[32] On May 4, 2022, the Commission established an overpayment. It sent a notice of debt on May 7, 2022.

[33] The Appellant took steps with the fraud complaints department. He later learned that the cheque had been cashed in August 2020 in an account that didn't belong to him.

[34] On November 24, 2022, he received a letter asking him to repay \$2,000. He realized that the matter hadn't been resolved. He asked for a reconsideration in early December 2022, when he was told about it.

[35] On October 3, 2023—almost a year later—the Commission made its decision. It refused to reconsider the May 4, 2022, decision. Once again, it didn't get the Appellant's information.

[36] I understand the Commission's position. It didn't get any information from the Appellant to determine whether he had shown a continuing intention to challenge the decision.

[37] But after considering the Appellant's credible testimony and how he has maintained his version of events throughout the appeal process before the Tribunal, I find that the Appellant has shown that he had a continuing intention to ask for a reconsideration.

[38] I find that the Appellant has issues with his means of communication and that he takes a longer approach to reach his goals. For example, before filing a notice of appeal

with the Tribunal, he made an access to personal information request with Service Canada.<sup>6</sup> This is not the best way, but it shows that he wanted to challenge the decision. Also, the fraud investigation doesn't seem to be over.

## **Conclusion**

[39] The Commission didn't have all the information when it refused to give the Appellant an extension of time to ask it to reconsider.

[40] The appeal is allowed.

Manon Sauvé  
Member, General Division – Employment Insurance Section

---

<sup>6</sup> GD2-10.