



Citation: *NK v Canada Employment Insurance Commission*, 2025 SST 159

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: N. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (690312) dated November 21,
2024 (issued by Service Canada)

Tribunal member: Kristen Thompson

Type of hearing: Teleconference

Hearing date: February 6, 2025

Hearing participants: Appellant
Interpreter

Decision date: February 7, 2025

File number: GE-25-139

Decision

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

[2] The Canada Employment Insurance Commission (Commission) used its discretion judicially when it didn't give the Appellant an extension of time to ask it to reconsider its initial decision.

Overview

[3] The Commission decided that it was unable to pay Employment Insurance (EI) benefits to the Appellant because he lost his job due to misconduct, in its initial decision dated March 15, 2023. The Appellant asked the Commission to reconsider its decision, in his reconsideration request dated September 6, 2024.

[4] The Appellant was late in requesting a reconsideration of the decision, so he needed to ask for an extension of time from the Commission. The Commission refused to give him an extension of time.

[5] The Commission says that it used its discretion judicially when it denied the extension of time, as it considered all relevant factors.

[6] The Appellant doesn't dispute that the Commission used its discretion judicially when it denied the extension of time. But he says that he should get an extension of time, due to his financial situation.

[7] I have to decide whether the Commission used its discretion judicially when it denied the extension of time. If it did, I can't change the Commission's decision. If it didn't, I have to make the decision that it should have made.

Issue

[8] Did the Commission use its discretion judicially when it refused to give the Appellant more time to ask for a reconsideration of its initial decision?

[9] If the Commission didn't use its discretion judicially, should the Appellant have more time to ask the Commission to reconsider its initial decision?

Analysis

[10] You have 30 days to ask the Commission to reconsider a decision.¹ The Commission may give you an extension of time if your request for reconsideration is late.²

[11] To get an extension, you have to show that:

- you have a reasonable explanation for asking for more time, and
- you continually intended to ask the Commission to reconsider its decision³

[12] Sometimes, you also have to show that:

- your request has a reasonable chance of success, and
- there is no prejudice to the Commission or another party to allow a longer period⁴

[13] You have to meet all four factors when certain conditions apply, including when you ask for a reconsideration more than 365 days after the Commission told you of its decision.⁵

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

² See paragraph 112 (1)(b) of the *Employment Insurance Act*.

³ See subsection 1(1) of the *Reconsideration Request Regulations*.

⁴ See subsection 1(2) of the *Reconsideration Request Regulations*.

⁵ See subsection 1(2) of the *Reconsideration Request Regulations*.

[14] The Appellant says that he received the Commission's initial decision around the time it was dated, March 15, 2023. He agrees that his request for reconsideration is more than a year late.

[15] The Appellant and the Commission both agree that all four factors apply because he asked for the reconsideration more than 365 days after the Commission told him of its decision. I see no evidence to indicate otherwise and so I accept that all four factors apply.

Did the Commission use its discretion judicially?

[16] I find that the Commission used its discretion judicially when it denied the extension of time.

[17] The Commission's decision on whether to give the Appellant more time is discretionary.⁶ This means that it is open to the Commission to decide whether the Appellant has met the requirements to get the extension.

[18] The law says that I can only make a decision on the extension of time itself if I first find that the Commission used its discretion in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it.⁷

[19] Discretion is used in a non-judicial manner if the Commission did one of the following:

- acted in bad faith or discriminatorily
- acted for an improper purpose or motive
- considered an irrelevant factor or overlooked a relevant factor⁸

⁶ See *Canada (Attorney General) v Daley*, 2017 FC 297.

⁷ See *Canada (Attorney General) v Tong*, 2003 FCA 281.

⁸ See *Attorney General of Canada v Purcell*, A-694-94.

[20] The Commission says that it used its discretion judicially when it denied the extension of time, as it considered all relevant factors.

[21] The Appellant doesn't dispute that the Commission used its discretion judicially when it denied the extension of time. But he says that he should get an extension of time, due to his financial situation.

[22] In his request for reconsideration, the Appellant says that he is unable to find a job. He says that his co-worker worked illegally in Canada, and they didn't get along. He says that there was a small issue, which was addressed by the employer, and he shouldn't have been let go.

[23] The Commission says that it considered the following when it decided whether to allow the Appellant more time to request a reconsideration:

- the Appellant didn't have a reasonable explanation for asking for more time, as the only reason he provided was that he wasn't able to find a job
- the Appellant didn't continually intend to ask it to reconsider its decision, as he didn't contact it or provide it with further information
- it wasn't satisfied that the request has a reasonable chance of success, because the employer said that the Appellant struck a co-worker, and this isn't considered acceptable conduct
- there is no prejudice to the Commission or another party to allow a longer period

[24] The Appellant testified that he didn't initially request a reconsideration because he was looking for work.

[25] The Appellant says that he requested a reconsideration because he didn't find a job. He says that he borrowed money from his family, his car broke down, and he didn't have money for rent. He says that he wants to be able to pay what he owes to others.

[26] The Appellant says that his co-worker wasn't in Canada legally. He says that his co-worker lied about the situation, so the employer dismissed him.

[27] I find that the Commission has shown that it used its discretion judicially when it denied the extension of time. The Appellant doesn't dispute that the Commission used its discretion judicially when it denied the extension of time. The Appellant didn't provide any further relevant factors, that weren't already considered by the Commission. I don't find that the Commission acted in bad faith or discriminatorily, for an improper purpose or motive, or considered an irrelevant factor.

Conclusion

[28] The Commission used its discretion judicially when it didn't give the Appellant an extension of time to ask it to reconsider its initial decision. This means that the appeal is dismissed.

Kristen Thompson
Member, General Division – Employment Insurance Section