



Citation: *JK v Canada Employment Insurance Commission*, 2025 SST 782

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: J. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (717111) dated March 11, 2025
(issued by Service Canada)

Tribunal member: Edward Houlihan

Type of hearing: Teleconference

Hearing date: May 6, 2025

Hearing participant:

Appellant

Decision date: June 2, 2025

File number: GE-25-1103

Decision

[1] The appeal is dismissed. I disagree with the Appellant.

[2] The Appellant was late making her request for reconsideration. The Canada Employment Insurance Commission (Commission) exercised their discretion judicially when it refused to extend the time for the Appellant to ask to have their decision reconsidered.

Overview

[3] The Appellant established a claim for Employment Insurance (EI) benefits effective February 14, 2021. She had a subsequent claim beginning August 7, 2022.

[4] There was an error made in this application regarding her date of birth. This was corrected on January 19, 2023, when she filed her birth certificate with the Commission.

[5] A notice of penalty and violation dated August 4, 2023, and a notice of debt was issued to the Appellant. They were sent August 4, 2023, but the Appellant says she never received them.

[6] She says that the first notice she received was a notice of debt dated September 29, 2023. She asked the Commission for the details of the debt.

[7] The Commission reissued the notice of penalty and violation on October 20, 2023. It was mailed to the Appellant at a new address.

[8] The Appellant submitted a request for reconsideration of the Commission's decision on February 3, 2025. She explained that she had thought the issue about overpayment of benefits was a mistake. She says she made several attempts to deal with the situation.

[9] The Appellant says she had difficulties accessing her file with the Commission because of the mix-up with her real birthdate. She says that she had very difficult personal problems and serious financial difficulties during this period.

[10] The Commission decided that the Appellant's request for reconsideration was late. She had 30 days to request reconsideration. They refused to reconsider its October 20, 2023, decision.

[11] The Commission says that the Appellant didn't have a reasonable explanation for the delay in requesting reconsideration. She also hadn't demonstrated a continuing intention to request reconsideration between October 20, 2023, and February 3, 2025.

[12] The Commission also says that they exercised their discretion in a judicial manner (that means acted fairly) when they denied they denied the Appellant's request to extend the 30-day period for requesting reconsideration.

[13] The Appellant is appealing the Commission's decision not to allow her request for consideration to go ahead.

Issues

[14] Was the Appellant's request for reconsideration late?

[15] If yes, did the Commission exercise its discretion judicially when it denied the Appellant more time to file a request for reconsideration?

[16] If the Commission's decision wasn't made judicially, should the Appellant be granted an extension of time to request reconsideration of the decision?

Analysis

[17] When the Commission makes a decision about your EI benefits, the law allows you to ask for reconsideration of that decision. However, the request to the Commission has to be made within 30 days of the decision being communicated to you.¹

[18] If you wait more than 30 days to ask for a decision to be reconsidered, then your request is late.

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

[19] The Commission has the discretion to allow an Appellant more time to file their request for reconsideration.² However, there are requirements that an Appellant has to meet to receive additional time to file their request.³

[20] The Commission considers 2 questions for a late reconsideration request.

- Does the Appellant have a reasonable explanation for being late?
- Has the Appellant shown that they always meant to request reconsideration even though they were late?⁴

[21] If the Appellant waits more than 365 days to request reconsideration of a decision, then there are 2 additional questions the Commission has to consider.

- Does the request for reconsideration have a reasonable chance of success?
- Would there be any prejudice caused to the Commission or a party by allowing the extension of time to request reconsideration?⁵

[22] The decision-making power isn't exercised judicially if the decision maker; acted in bad faith, acted for an improper purpose or motive, considered an irrelevant factor or ignored a relevant factor or acted in a discriminatory manner.⁶

[23] If the Commission didn't properly exercise its discretion, I can make the decision it should have made, based on the requirements of the Reconsideration Regulations.⁷

Issue 1: Was the Appellant's request for reconsideration late?

[24] I find that the Appellant's request for reconsideration was late.

² See Section 112 (1)(b) of the Act

³ See section 1(1) and 1(2) of the *Reconsideration Regulations* (Reconsideration Regulations)

⁴ See section 1(1) of the Reconsideration Regulations

⁵ See Section 1(2)(a) of the Reconsideration Regulations.

⁶ See *Attorney General (Canada) v Purcell*, [1996] 1FCR 644

⁷ See *Attorney General (Canada) v Knowler*, A-445-05

[25] The cases say that the Commission has to show that the decision was communicated to the Appellant.⁸

[26] The Commission says that they sent the decision to the Appellant on August 4, 2023.⁹ The Appellant says that she never received the decision.¹⁰

[27] The Commission reissued their decision and sent it to the Appellant by mail on October 20, 2023.¹¹ The Appellant says that she received the reissued decision a few days later.¹²

[28] The exact date that the Appellant received the decision isn't known. I find it reasonable to allow for 10 days from the date it was mailed by the Commission until it was received by the Appellant.

[29] I find that the Appellant received the decision by October 30, 2023.

[30] The Appellant had 30 days from the date of communication of the decision to submit her request for reconsideration. That means it should have been submitted by November 30, 2023.

[31] The Appellant submitted her request for reconsideration on February 3, 2025.¹³ It was more than 30 days late. The Commission says that the request for reconsideration was submitted by the Appellant 442 days late.¹⁴

[32] I find that the request for reconsideration was 432 days late. The difference being that I allowed 10 days for delivery of the communication to the Appellant by mail.

[33] The request for reconsideration made by the Appellant was more than 365 days late.

⁸ See *Bartlett v Attorney General (Canada)*, 2012 FCA 230

⁹ See GD3- 28 to GD3-30

¹⁰ See GD3-38

¹¹ See GD3-39 to GD3-41

¹² See GD3-44

¹³ See GD3-42 to GD3-44

¹⁴ See GD4-2

Issue 2: Did the Commission exercise its discretion judicially when it denied the Appellant more time to make her request for reconsideration?

[34] I find the Commission acted judicially when it exercised its discretion and denied the Appellant an extension of time to request reconsideration.

[35] The Commission looked at whether the Appellant had a reasonable explanation for the delay and if she had demonstrated a continuing intention to ask for reconsideration.

[36] The Commission says that the Appellant was aware of the debt for overpayment of benefits at the end of September 2023. She knew about the Commission's decision by the end of October 2023 when the decision was reissued and delivered to her address.¹⁵

[37] The Appellant delayed until February 3, 2025, to make a request for reconsideration.

[38] Once the Appellant was aware of her debt, she says that she immediately contacted her tax preparer to find out what had happened with her claim for benefits as the tax preparer had completed the forms on her behalf.¹⁶

[39] The Appellant followed up with her tax preparer in March 2024. However, there were no other follow up steps by the Appellant until February 3, 2025, when she submitted her request for reconsideration.¹⁷

[40] The Appellant says that she had encountered serious financial difficulties during this period. She had started a new job in October 2023 which gave her enough money to just get by. She hoped that the overpayment debt was a clerical error.¹⁸

¹⁵ See GD3-45

¹⁶ See GD2-9

¹⁷ See GD2-17 to GD2-33

¹⁸ See GD2-10

[41] The Appellant also had pre-purchased a condominium that was now ready for occupancy. She had to pay occupancy fees of \$4,700 a month. She had to go into debt to pay these fees and ultimately, she sold the condominium in July 2024.¹⁹

[42] The Appellant says that these financial problems didn't give her time to deal with her employment insurance issues.²⁰

[43] The Appellant also encountered difficult personal problems. She suffered a traumatic miscarriage which affected her physically and emotionally.²¹

[44] She ended an engagement, lost her job in March 2025 and has had to move back to Toronto.²²

[45] The Appellant says that the problem with the wrong birthdate on her forms interfered with her accessing her file with Service Canada and tackling her overpayment.²³

[46] However, the Commission says that the issue with the birthdate was corrected with Service Canada on January 19, 2023, which was 9 months before the Appellant became aware of the Commission's decision.²⁴

[47] The Appellant admits that she didn't have any illness preventing her from submitting her request for reconsideration. She says that she was overwhelmed with her personal problems.²⁵

[48] The Commission says that the Appellant took action in October 2023 by contacting her tax preparer. She followed up with him in March 2024, but there are no other follow up steps until the Appellant requested reconsideration on February 3, 2025.

¹⁹ See GD2-10

²⁰ See GD3-44

²¹ See GD2-1 and GD2-12 and GD2-13

²² See GD2-10

²³ See GD3-43

²⁴ See GD4-4

²⁵ See GD3-44

[49] The Commission acknowledged that the Appellant had encountered financial and health obstacles from October 2023 to November 2024, but these obstacles didn't justify the delay of more than 400 days.²⁶

[50] The Commission decided that the Appellant hadn't provided a reasonable explanation for requesting a longer period of time to submit her request for reconsideration.

[51] They also decided that she hadn't demonstrated a continuing intention to request a reconsideration of the decision from October 2023 to February 2025.

[52] The Commission limited their assessment to extend the time to request reconsideration to the requirements of Section 1(1) of the Reconsideration Regulations.

[53] The Commission says that, because the request to reconsider the decision was more than 365 days late, all 4 requirements in Sections 1(1) and 1(2) of the Reconsideration Regulations have to be met in order to grant an extension of time to request reconsideration.

[54] As they had decided that the Appellant hadn't met the requirements of Section 1(1), there was no need to assess the requirements of Section 1(2) of the Reconsideration Regulations.²⁷

[55] There is nothing in the evidence that shows the Commission considered irrelevant information, that it failed to consider relevant information, that it acted in a discriminatory manner, in bad faith or for an improper purpose.

[56] I find that the Commission acted judicially.

[57] This means that I don't have the authority to interfere in the Commission's decision not to exercise its discretion to extend the 30-day deadline for asking for reconsideration of their decision of October 20, 2023.

²⁶ See GD4-4

²⁷ See GD4-4

Conclusion

[58] The appeal is dismissed.

Edward Houlihan

Member, General Division – Employment Insurance Section