Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	R. A.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision dated (issued by Service Canada)

Tribunal member:	Leanne Bourassa
Decision date:	June 10, 2024
File number:	GE-24-1099

Decision

[1]   The appeal won't go ahead. I am not giving the Appellant more time to appeal. In other words, I am not accepting the late appeal. This decision explains why.

Overview

[2]   The Canada Employment Insurance Commission (Commission) made a decision in the Appellant's case. The Appellant asked the Commission to reconsider. The Commission reconsidered and sent the Appellant a letter about its reconsideration decision on November 4, 2022.

[3]   The Appellant disagreed with the reconsideration decision, so he appealed it to the Social Security Tribunal (Tribunal) on March 17, 2024.

[4]   There is a deadline for appealing to the Tribunal. An appellant who appeals late has to explain why they are late.[1] The Tribunal will give more time to appeal if the appellant has a reasonable explanation for why they are late.[2]

[5]   The Appellant has not explained why his appeal is late.

Issue

[6]   I have to decide the following two issues:

    a) Is the Appellant's appeal late?

    b) If so, does he have a reasonable explanation for why his appeal is late?

Analysis

[7]   If an appellant disagrees with the Commission's reconsideration decision, they can appeal to the Tribunal.[3] They have to appeal within 30 days after the Commission

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[1] See section 27(1) of the *Social Security Tribunal Rules of Procedure* (Rules).
[2] Section 52(2) of the *Department of Employment and Social Development Act* (DESD Act) says that the Social Security Tribunal may allow up to a year. See also section 27(2) of the Rules.
[3] See section 113 of the *Employment Insurance Act*.

told them about the decision.[4] In no case can an appeal go ahead if it is brought more than one year after the day on which the reconsideration decision was communicated to the appellant.[5]

The Appellant's appeal is late

[8]   I find that the Appellant's appeal is late.

[9]   In his notice of appeal, the Appellant says that the Commission told him about its reconsideration decision on September 21, 2022.

[10]   I think this is likely a mistake, as the Commission's original decision to the Appellant was communicated by letter dated September 1, 2022.[6] The Appellant asked for that decision to be reconsidered on September 21, 2022.[7]

[11]   The Commission has to prove that it told the Appellant about its decision.[8] The Commission has to prove this on a balance of probabilities. This means that it has to show that it is more likely than not that it told the Appellant about its decision when it says it did.

[12]   The Commission's reconsideration letter telling the Appellant about its decision is dated November 4, 2022.

[13]   I don't have to decide on a specific date to find that the appeal is late. This is because all of these possible dates are more than 30 days from March 17, 2024, when the Appellant appealed. No evidence points to a possible date that is less than 30 days from that. This means that the Appellant's appeal is late.

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[4] See section 52(1)(a) of the DESD Act.
[5] See section 52(2) of the DESD Act.
[6] See GD3-25.
[7] See GD3-26 to GD3-27.
[8] See *Bartlett v Canada (Attorney General)*, 2012 FCA 230.

[14]   I have considered whether the Appellant's file might be more than a year late. I have decided that I can not reach that conclusion without being certain of the date on which the decision was communicated to the Appellant.

[15]   Although the date on the reconsideration decision letter sent to the Appellant was November 4, 2022, I note that the Commission was not successful in trying to reach the Appellant at the reconsideration stage. So, this letter was sent to him without a phone conversation confirming the decision and the Appellant's right to appeal to the Tribunal.

[16]   I also note that the address to which the November 4, 2022 letter was sent is not what appears to be the Appellant's current address. While there is no evidence that the Commission's letter was returned as undeliverable, I can not conclude that the Appellant did or did not get the letter that was sent to that address.

[17]   Since I can not conclude with certainty that the Appellant received notice of the Commission's reconsideration decision before March 17, 2023, I can't conclude that the appeal is more than one year late.

[18]   At some point however, the Appellant did become aware of his right to appeal this decision to the Tribunal and took this step.

The Appellant doesn't have a reasonable explanation

[19]   I find that the Appellant didn't give a reasonable explanation for the delay in filing his appeal between November 4, 2022 and March 17, 2024.

[20]   The Appellant's Notice of Appeal to the Tribunal, and the email message he sent with his Notice of Appeal do not explain why his appeal is being filed late.

[21]   On April 12, 2024, I sent the Appellant a letter asking him to confirm when he received the Commission's letter of November 4, 2022. I also asked him to confirm his address on November 4, 2022, and why he delayed until March 17, 2024, to appeal the decision.

[22]   I gave the Appellant until May 3, 2024 to respond to my request. He did not answer by that date. He still has not answered.

[23]   Since I have no explanation for why the Appellant only filed his Notice of Appeal more than 6 months after the reconsideration decision was sent to him via mail, I find that he did not give a reasonable explanation for why his appeal is late. So, I am not giving him more time to appeal.

Conclusion

[24]   The Appellant didn't give a reasonable explanation for why his appeal is late. Because of this, I can't give the Appellant more time to appeal.

[25]   This means the appeal won't go ahead.

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Leanne Bourassa

Member, General Division – Employment Insurance Section

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