



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. V. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 105

Tribunal File Number: GE-16-4431

BETWEEN:

**L. V.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Glen Johnson

HEARD ON: May 31, 2017

DATE OF DECISION: June 13, 2017

## REASONS AND DECISION

### PERSONS IN ATTENDANCE

Claimant: L. V.

### INTRODUCTION

[1] The Claimant became unemployed on July 13, 2015. She made an initial claim for Employment Insurance (EI) benefits and a benefit period was established effective April 3, 2016. On August 12, 2016 the Claimant tried to submit her claims for EI benefits for the weeks of June 26, 2016 to July 9, 2016 but the online reporting system would not allow her to submit her claims since the report for the weeks of June 26, 2016 to July 30, 2016 needed to be submitted at the latest on August 6, 2016.

[2] The Claimant reapplied for EI benefits on August 12, 2016 seeking to reactivate her benefit period and requested that her claims be antedated to June 26, 2016. The Canada Employment Insurance Commission (Commission) denied the antedate request at the initial and reconsideration levels because the Claimant did not complete her reports within the allowed time and she did not show good cause for being late. The Claimant appealed to the Social Security Tribunal (SST).

[3] The hearing was held by teleconference for the following reasons:

- a) The complexity of the issue under appeal;
- b) The fact that credibility is not expected to be a prevailing issue;
- c) The information in the file, including the need for additional information;
- d) The form of hearing respects the requirement under the *Social Security Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

## **PRELIMINARY ISSUE**

[4] On May 29, 2017 the Claimant filed a document she found on the Government of Canada “*My Service Canada Account*” website (GD5). The document was provided to the Commission by the Tribunal on May 29, 2017. The document was filed very late in the appeal process and the Tribunal must decide whether to allow the document to be considered in her appeal.

[5] At the hearing the Claimant said the document is the same as a document she had seen during the time period of June 26, 2016 and July 30, 2016. She said she had just recalled where she had seen the wording in the document a few days before the hearing and filed the document soon thereafter. The wording in GD5 which she wishes the Tribunal to focus on is: “*to prevent any delays, you must complete your report within three weeks of its due date*”.

[6] The Tribunal will allow the document to be considered in the appeal since it is relevant, the wording in the document had just come to the Claimant’s attention a few days before the hearing, the Commission was provided a copy, and in any event the document was on the Service Canada website and the Commission should be familiar with the document.

## **ISSUE**

[7] The issue under appeal is whether the Claimant has proven good cause for the delay in filing her claims for benefits pursuant to subsection 10(5) of the *Employment Insurance Act* (EI Act).

## DECISION

[8] The Tribunal finds that the Claimant has not proven good cause for the delay in filing her Claimant reports pursuant to subsection 10(5) of the EI Act.

## EVIDENCE

[9] The Claimant applied for regular EI benefits on April 3, 2016 stating that her last day of work was July 13, 2015 and she expected to be returning to work for this employer at an unknown date. (GD3-3 to GD3-12).

[10] The Commission provided a Full Text Screens E-Report History showing that the Claimant filed a Claimant report via the internet on June 27, 2016, for the weeks of June 12, 2016 to June 25, 2016. The E-Report History states it is important that the Claimant file the next report within 3 weeks of the due date given to her “*otherwise a loss of benefits may occur*” (GD3-20). In testimony the Claimant acknowledged having received this E-Report warning. The Claimant also acknowledged receiving near that time period a document similar to GD5 with the wording: “*to prevent any delays, you must complete your report within three weeks of its due date*”.

[11] The Claimant testified the combined effect of GD3-20 and GD5 was misleading to her. She said the words “*may*” and “*to prevent any delays*” seem to convey an impression the late filing of Claimant reports would not have the severe repercussion of disentitling her from EI benefits for June 26, 2016 to July 30, 2016. She said her English is poor, she was not aware of the “*detail*” in the EI legislation and filing her Claimant reports was not on her priority list at the time.

[12] During the hearing the Claimant appeared to the Tribunal to be quite fluent with English; using words such as “*establish*”, “*resilient*” and “*incapacitated*”. She did not ask the Tribunal to have any words explained to her.

[13] The Commission provided a Full Text Screen E-Report History showing the Claimant attempted to file a Claimant report via the internet on August 12, 2016 but was “*screened out*” or rejected because it was submitted too late to be processed (GD3-22).

[14] The Claimant applied for regular EI benefits again on August 12, 2016 stating that she had not worked since she completed her last application for EI benefits (GD3-26). Her benefit period was reactivated.

[15] On August 29, 2016, the Claimant attended upon the Commission to request her claims for benefits for the weeks of June 26, 2016 to July 30, 2016 be back dated to June 26, 2016 (GD3-33). She said she did not complete her Claimant reports due to being offered a job which was to begin in the middle of July, but she did not actually start work until August 29, 2016. She testified this statement is accurate. A Supplementary Record of Claim completed by the Commission on August 29, 2016 states the Claimant said nothing prevented her from completing her reports, she just did not do them because she was offered a job (GD3-34).

[16] On September 27, 2016, the Claimant filed a Request for Reconsideration of the Commission’s decision that her claims for benefits could not be back dated to June 26, 2016 (GD3-36). She said in her request for reconsideration that during June 26, 2016 to July 30, 2016 she “*was under extreme and intense stress, caused by several unfortunate life events.*”

[17] The Claimant filed a letter from Homewood Health indicating she had counselling sessions with a Registered Clinical Counsellor June 28, 2016, July 19, 2016, August 2, 2016, as well as earlier sessions and later sessions (GD3-38). The letter is silent as to the reasons for the sessions, any physical or psychological conditions of the claimant or the type of counselling performed. The Claimant testified she was not taking medication for a medical condition at the relevant time period.

[18] The Claimant testified she did not attempt to file a claim for EI sickness benefits for June 26, 2016 to July 30, 2016. She said she was not incapacitated and her goal was to be resilient to her medical condition.

## **SUBMISSIONS**

[19] The Claimant submitted that:

- a) She is entitled to EI benefits for the period June 26, 2016 to July 30, 2016 because being late in filing her report with the Commission with a penalty of non-payment is a penalty too high;
- b) During the relevant time period she understood, with her poor English, the late filing of a claimant report may result in EI benefits not being processed on time, rather than the report not being accepted at all;
- c) She was not aware of the “*detail*” in the EI legislation and filing her Claimant reports was not on her priority list at the relevant time period;
- d) A reason she did not complete her Claimant reports on time was due to being offered a job during the relevant period;
- e) She was facing multiple life challenges and was under extreme and intense stress which caused her to file a late report.

[20] The Commission submitted that:

- a) The Claimant did not return her EI reports until August 12, 2016 outside the allowable period in accordance with subsection 26(1) of the EI Regulations. The reports should have been filed with the Commission no later than August 6, 2016;

- b) The Commission had previously informed the Claimant it is important to file her reports within three weeks of the due date; otherwise a loss of benefits may occur;
- c) The Claimant's reasons for attempting to process her Claimant reports late did not constitute good cause in accordance with subsection 10(5) of the EI Act and she was therefore disentitled from receiving EI benefits for the period June 26, 2016 to July 30, 2016;
- d) While the Claimant states she was under stress and could not complete her reports for the period June 26, 2016 to July 30, 2016 within the allowable period, she was not prevented from completing her daily activities and was looking for work and capable for work every day. She did not request sickness benefits for the period in question, which is contradictory;
- e) The Claimant states she did not complete her reports because she was offered a job. She was not prevented from completing her reports within the allowable period and while the claimant argued she was ignorant of the filing requirements she had previously completed reports on time.

## **ANALYSIS**

[21] The relevant legislative provisions are reproduced in the Annex to this decision.

[22] The antedating of claims is permissible under subsection 10(5) of the EI Act in circumstances where good cause for the delay is established. To establish good cause, the jurisprudence of the Federal Court of Appeal requires that a Claimant "*be able to show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act*" (*Canada (Attorney General) v. Albrecht*, A-172-85). It is also

settled law that, unless exceptional circumstances exist, a Claimant has an obligation to take “*reasonably prompt steps*” to determine entitlement to EI benefits and to ensure her rights and obligations under the EI Act (*Canada (Attorney General) v. Carry*, 2005 FCA 367; *Canada (Attorney General) v. Somwaru*, 2010 FCA 336).

[23] Good cause must be shown throughout the entire period for which the antedate is required (*Canada (Attorney General) v. Chalk*, 2010 FCA 243). The burden of proof rests on the claimant (*Canada (Attorney General) v. Kaler*, 2011 FCA 266).

[24] The obligation and duty to promptly file a claim is seen as very demanding and strict. This is why the “*good cause for delay*” exception is cautiously applied (*Canada (Attorney General) v. Brace*, 2008 FCA 118).

[25] According to section 26 of the Regulations, a claim for EI benefits for a given week of unemployment in a benefit period must be made within three weeks after the week for which benefits are claimed, unless a claim has not been made for four or more consecutive weeks, in which case the claim is to be made within one week of the week for which benefits are being claimed. These provisions require a Claimant to act diligently in making a claim for unemployment benefits (*Canada (Attorney General) v. Kokavec*, 2008 FCA 307). Claims for benefits are made by way of the biweekly reports that are submitted online to the Commission.

[26] The Tribunal finds that the Claimant has not proven good cause for the delay in filing her Claimant reports pursuant to subsection 10(5) of the EI Act.

[27] The Claimant submits she understood the EI report to state that late filing of a report may result in EI benefits not being processed on time, not that the report would not be accepted at all.

[28] The Tribunal acknowledges the combined effect of GD3-20 and GD5, using words such as “*to prevent any delay*” and “*may*” result in a loss of benefits, may seem to convey leniency and should be re-worded; however, ignorance of the law, even if coupled with confusion or good faith, is not sufficient to establish good cause (*Canada (Attorney General) v. Somwaru*, 2010 FCA 336).



[29] The Claimant submits her misunderstanding of the severity of repercussions for the late filing of Claimant reports is compounded by her poor English. The Tribunal finds the Claimant is capable of reading and comprehending English. In testimony the Claimant appeared to the Tribunal to be quite fluent with English.

[30] The Claimant submits she is entitled to EI benefits for the period June 26, 2016 to July 30, 2016 because being late in filing her employment report with the Commission with a penalty of non-payment is a penalty too high. However, the Tribunal accepts the Claimant was warned that she may be disentitled from receiving benefits if she did not file her reports on time, as indicated in the E-Report History.

[31] The requirement of showing good cause for the delay for antedating a claim for EI benefits under subsection 10(5) of the EI Act is the same as for antedating an initial claim under subsection 10(4) of the Act; it involves being able to show that she did what a reasonable person in her situation would have done to satisfy herself as to her rights and obligations under the EI Act. The Claimant stated that was not aware of the “*detail*” in the EI legislation and filing her Claimant reports was not on her priority list at the relevant time period. The Tribunal is reminded of the Federal Court of Appeal (FCA) decision *Canada (Attorney General) v. Beaudin*, 2005 FCA 123 where Justice Létourneau explained:

“The justification given by the respondent essentially consists of the fact that he was unfamiliar with the employment insurance system and that is why he filed his initial claim almost one year after his dismissal...

It is worth noting that subsection 10(4) of the Act is not the product of a mere legislative whim. It contains a policy, in the form of a requirement, which is instrumental in the sound and efficient administration of the Act. On the one hand, this policy helps "to assure the proper administration and the efficient processing of various claims" and "to enable the Commission to review constantly the continuing eligibility of a claimant to whom benefits are being paid.

Antedating the claim for benefits may adversely affect the integrity of the system, in that it gives a claimant a retroactive and unconditional award of benefits, without any possibility of verifying the eligibility criteria during the period of retroactivity.

Furthermore, a sound and equitable administration of the system requires that the Commission engage in a quick verification that is as contemporaneous as possible with the events and circumstances giving rise to the claim for benefits.

Otherwise, the Commission finds itself in the difficult position of having to engage in a job or process of reconstruction of the events, with the costs and hazards pertaining to such a process. This is what explains the principle, long established by the jurisprudence of this Court, that ignorance of the Act does not excuse a delay in filing an initial claim for benefits.”

[32] Further, the FCA decision *Shebib v. Canada (Attorney General)*, 2003 FCA 88 stated:

“Regrettably, it is often those who have little or no experience with employment insurance benefits and who have the best of intentions who get caught out in the maze of statutory and regulatory provisions that Parliament and the Governor in Council seem to consider necessary to prevent abuse of the employment insurance system. I accept that the applicant has acted in good faith and with the best of intentions. Unfortunately, on the present state of the law, that does not constitute good cause for entitling him to an antedating of his claim for employment insurance benefits.”

[33] The Claimant submits she was facing multiple life challenges and was under extreme and intense stress which caused her to file a late report. The Tribunal finds that nothing prevented the Claimant from completing her reports; she just did not do them because was not aware of the “*detail*” in the EI legislation and filing her Claimant reports was not on her priority list at the relevant time period, and she was offered a job, as indicated in the Supplementary Record of Claim completed by the Commission on August 29, 2016.

[34] The Tribunal finds the Claimant was under stress and was in psychological counselling during the time period of June 26, 2016 to July 30, 2016, but the medical evidence provided by the Claimant does not indicate she had a diagnosed medical condition, that it prevented her from completing her Claimant reports, or that she was taking medication for her condition. Further, it is contradictory that the Claimant says she did not attempt to file a claim for EI sickness benefits for June 26, 2016 to July 30, 2016. She was not incapacitated and her goal was to be resilient to her medical condition.

[35] The Tribunal finds the Claimant has not proven good cause for the delay in filing her reports and accordingly is not entitled to have her claims antedated. The Commission properly denied the antedate request pursuant to subsection 10(5) of the EI Act.

## **CONCLUSION**

[36] The appeal is dismissed.

*Glen Johnson*

Member, General Division - Employment Insurance Section

## ANNEX

### THE LAW

#### *Employment Insurance Act*

**10 (1)** A benefit period begins on the later of

- (a) the Sunday of the week in which the interruption of earnings occurs, and
- (b) the Sunday of the week in which the initial claim for benefits is made.

**(2)** Except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks.

**(3)** Subject to a change or cancellation of a benefit period under this section, a benefit period shall not be established for the claimant if a prior benefit period has not ended.

**(4)** An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

**(5)** A claim for benefits, other than an initial claim for benefits, made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.

**(5.1)** A claim for benefits referred to in section 23.1 with respect to a family member shall not be regarded as having been made on an earlier day under subsection (4) or (5) if

- (a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;
- (b) the beginning of the period referred to in subsection 23.1(4) has already been determined with respect to that family member and the claim would have the effect of moving the beginning of that period to an earlier date; or
- (c) the claim is made in any other circumstances set out in the regulations.

**(5.2)** A claim for benefits referred to in section 23.2 with respect to a critically ill child or children who are critically ill as a result of the same event must not be regarded as having been made on an earlier day under subsection (4) or (5) if

(a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;

(b) the beginning of the period referred to in subsection 23.2(3) or (4) has already been determined with respect to that child or those children and the claim would have the effect of moving the beginning of that period to an earlier date; or

(c) the claim is made in any other circumstances set out in the regulations.

(6) Once a benefit period has been established for a claimant, the Commission may

(a) cancel the benefit period if it has ended and no benefits were paid or payable during the period; or

(b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant

(i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and

(ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.

(7) A cancelled benefit period or portion of a benefit period is deemed never to have begun.

(8) A benefit period ends when any of the following first occurs:

(a) no further benefits are payable to the claimant in their benefit period, including for the reason that benefits have been paid for the maximum number of weeks for which benefits may be paid under section 12;

(b) the benefit period would otherwise end under this section; or

(c) [Repealed, 2002, c. 9, s. 12]

(d) the claimant

(i) requests that their benefit period end,

(ii) makes a new initial claim for benefits under this Part or Part VII.1, and

(iii) qualifies, as an insured person, to receive benefits under this Part or qualifies, as a self-employed person within the meaning of subsection 152.01(1), to receive benefits under Part VII.1.

**(9)** Whether or not the benefit period has ended, a request under paragraph 8(d) shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the request was made.

**(10)** A claimant's benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

**(a)** confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction;

**(b)** in receipt of earnings paid because of the complete severance of their relationship with their former employer;

**(c)** in receipt of workers' compensation payments for an illness or injury; or

**(d)** in receipt of payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the claimant, her unborn child or a child whom she was breast-feeding.

**(11)** A claimant's benefit period is extended by the aggregate of any weeks during an extension of a benefit period under subsection (10) for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because of a reason specified in that subsection.

**(12)** If the child or children referred to in subsection 23(1) are hospitalized during the period referred to in subsection 23(2), the benefit period is extended by the number of weeks during which the child or children are hospitalized.

**(12.1)** If, during the period referred to in subsection 23(2), the start date of a claimant's period of parental leave is deferred or a claimant is directed to return to duty from parental leave, in accordance with regulations made under the *National Defence Act*, the benefit period is extended by the number of weeks during which the claimant's parental leave is deferred or the claimant is directed to return to duty, as the case may be.

**(13)** If, during a claimant's benefit period,

**(a)** regular benefits were not paid to the claimant,

**(b)** benefits were paid to the claimant for more than one of the reasons mentioned in paragraphs 12(3)(a) to (e) and at least one of those benefits was paid for fewer than the applicable maximum number of weeks established for those reasons, and

**(c)** the maximum total number of weeks established for those reasons is greater than 50,

the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.

**(13.1)** A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 17 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

**(13.2)** Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 17 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

**(13.3)** A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 37 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

**(13.4)** Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 37 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

**(13.5)** A claimant's benefit period is extended by 29 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.5).

**(13.6)** A claimant's benefit period is extended by 22 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.6).

**(13.7)** A benefit period that is deemed under subsection (13.2) or (13.4) not to have ended does not include the period that begins on the day after the day on which the benefit period ended and that ends on July 2, 2016.

**(14)** Subject to subsections (14.1) and (15), an extension under any of subsections (10) to (13.6) must not result in a benefit period of more than 104 weeks.

**(14.1)** The period that is excluded under subsection (13.7) is to be included in the calculation of the 104 weeks for the purposes of subsection (14).

**(15)** Unless the benefit period is also extended under any of subsections (10) to (12.1), an extension under subsection (13) must not result in a benefit period of more than the sum of two weeks and the total of the maximum number of weeks established under subsection 12(3) for each of the benefits paid to the claimant for one of the reasons mentioned in paragraphs 12(3)(a) to (e) during the claimant's benefit period before it was extended under subsection (13).

**50 (1)** A claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

- (2) A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.
- (3) A claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.
- (4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.
- (5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.
- (6) The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.
- (7) For the purpose of proving that a claimant is available for work, the Commission may require the claimant to register for employment at an agency administered by the Government of Canada or a provincial government and to report to the agency at such reasonable times as the Commission or agency directs.
- (8) For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.
- (8.1) For the purpose of proving that the conditions of subsection 23.1(2) or 152.06(1) are met, the Commission may require the claimant to provide it with an additional certificate issued by a medical doctor.
- (9) A claimant shall provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.
- (10) The Commission may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.

### ***Employment Insurance Regulations***

**26 (1)** Subject to subsection (2), a claim for benefits for a week of unemployment in a benefit period shall be made by a claimant within three weeks after the week for which benefits are claimed.

(2) Where a claimant has not made a claim for benefits for four or more consecutive weeks, the first claim for benefits after that period for a week of unemployment shall be made within one week after the week for which benefits are claimed.