



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. L. v. Canada Employment Insurance Commission*, 2018 SST 108

Tribunal File Number: GE-17-2750

BETWEEN:

**N. L.**

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: Catherine Shaw

HEARD ON: March 1, 2018

DATE OF DECISION: March 14, 2018

## **DECISION & REASONS**

### **OVERVIEW**

[1] The Appellant applied late for employment insurance (EI) benefits because she was waiting for documentation to ensure she would qualify. She filed her initial claim in March 2017, and it was denied as she had no insurable hours in her qualifying period. She wants her claim antedated to September 2015, as that was when she became unemployed. The Tribunal must decide whether her claim can be antedated.

### **DECISION**

[2] The appeal is dismissed. The Appellant's claim cannot be antedated because she failed to show she had good cause throughout the entire period of the delay in filing her initial claim for benefits.

### **PRELIMINARY MATTERS**

[3] Neither party to the appeal attended the teleconference hearing at the scheduled time, though they were duly notified. The Appellant received the Notice of Hearing on January 24, 2018, as Canada Post's delivery receipt was signed by the Appellant on that date. An amended Notice of Hearing was received on February 9, 2018, according to another Canada Post delivery receipt signed by the Appellant. Further, the Tribunal is satisfied that the Appellant was aware of the hearing as she sent an authorized representative to make submissions on her behalf. The representative confirmed that he was ready to proceed and did not wish to wait for the Appellant to be in attendance.

[4] Based on the above, The Tribunal proceeded with the hearing in the absence of the parties, pursuant to section 12(1) of the *Social Security Tribunal Regulations*.

### **ISSUES**

[5] Issue 1: Did the Appellant have good cause for the delay in filing her initial claim for benefits?

[6] Issue 2: If the Appellant had good cause for the delay, would she have qualified to receive benefits on September 27, 2015?

## **ANALYSIS**

[7] Antedate, the backdating of initial claims, is explained in subsection 10(4) of the *Employment Insurance Act* (Act). The Act states that an initial claim for benefits made after the day when the Appellant was first qualified to make the claim shall be regarded as having been made on an earlier day if the Appellant shows that (a) 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, and (b) she qualified to receive benefits on the earlier day.

### **Issue 1: Did the Appellant have good cause for the delay in filing her initial claim for benefits?**

[8] No. The claim cannot be antedated because the Appellant failed to show she had good cause for not making her claim throughout the entire period of the delay.

[9] Good cause is not the same as having a good reason, or a justification for the delay. In order to establish good cause the Appellant must 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 Act (*Canada (AG) v. Albrecht*, A-172-85).

[10] The Appellant must show she had good cause for failing to make an initial claim for benefits throughout the entire period of the delay, which is from September 27, 2015, the day she became unemployed, to March 21, 2017, the day she submitted her initial claim for benefits.

[11] In explaining this eighteen month delay, the Appellant's spouse, acting as her representative, stated that when the Appellant became unemployed, she chose not to file a claim for benefits until she was certain that she would qualify.

[12] The Appellant was employed for several months with a cleaning company, which ended in July 2015. After that position, the Appellant worked briefly as a cleaner at a hotel. She became unemployed again on September 27, 2015 and remained unemployed until August 2016.

[13] The Appellant says she did not make an initial claim for benefits immediately after being dismissed on September 27, 2015 because her spouse had looked at the Service Canada website and determined that she had not worked enough hours during her most recent employment as a hotel cleaner to establish a claim. She requested a CRA ruling on the insurability of her previous employment with the cleaning company, so she could use the hours she had accumulated in that position to qualify for benefits. She received the CRA ruling on August 19, 2016 that her employment had been insurable.

[14] After receiving the decision from CRA, the Appellant submits that she waited to see if the employer appealed that decision before she took any further action. The employer's right to appeal ended on November 19, 2016. The Appellant's spouse contacted the CRA in January 2017 to verify that the employer had not filed an appeal. The Appellant submitted that the reason for the delay in checking on the status of the appeal is that she thought that the holidays would delay the process, so her spouse did not call until after the holidays had ended.

[15] The Appellant explains the further delay in filing her claim was due to her assumption that she could not proceed until she had an ROE for both jobs. On January 25, 2017, the Appellant requested an ROE from Service Canada for her employment with the cleaning company, five months after receiving the CRA ruling on the position's insurability. During her visit to Service Canada, the Appellant was asked whether she wanted to apply for EI benefits and she declined. She received the ROE on March 7, 2017 and made an initial claim for benefits on March 21, 2017.

[16] The obligation 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).

[17] The Respondent argued that the Appellant failed to act as a reasonable person by not taking positive steps to clarify her mistaken assumption that she could not apply for benefits without a copy of her ROE from the cleaning company. The Appellant's representative stated that no one at Service Canada told the Appellant that she could apply for benefits without the ROE. The Tribunal does not accept this argument, as this information is available on the Service Canada website and the Appellant could have verified this requirement when she

visited the Service Canada in January 2017 and was asked whether she wanted to file for benefits. A reasonable person in her situation would have enquired about her benefit entitlement, and it is not reasonable to have failed to do so.

[18] The main reason given by the Appellant for her delay in making her benefit claim was that she saw no point in submitting a claim without being certain that she would qualify. The Appellant stated that the delays were caused by her wait to receive the CRA ruling, and the ROE for one of her employments. The Appellant's inability to obtain an ROE and waiting/delaying her application for this reason is not good cause for delay. (*Brace, supra*). The Tribunal finds that this reason for the delay does not constitute good cause as the Appellant was not required to have this information before she made her initial claim for benefits, the Respondent could have requested the CRA ruling and the ROE on behalf of the Appellant after receiving her claim. Rather than making enquiries about her rights and obligations, the Appellant relied on her assumptions that she needed to obtain this documentation before applying and waited. The Appellant's reliance on unverified information or unfounded assumptions does not constitute good cause (*Canada (Attorney General) v. Trinh, 2010 FCA 335*).

[19] The Tribunal finds the reasons the Appellant gave did not demonstrate good cause throughout the entire period of the delay. Other than the Appellant's spouse reviewing the Service Canada website after she became unemployed, the Appellant acknowledged that she at no time informed herself of her rights and obligations with Service Canada. A reasonable person in her situation would have contacted Service Canada and verified the information she had rather than waiting eighteen months before making her initial claim for benefits. Regrettably, she made no efforts to enquire about her eligibility for benefits during the entire period in question.

[20] Unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits under the Act (*Canada (Attorney General) v. Carry, 2005 FCA 367*). There is no evidence to support that exceptional circumstances prevented the Appellant from making enquiries about her rights and obligations and/or applying for benefits at any time throughout the eighteen month delay.

[21] The Tribunal concludes that the Appellant has not proven good cause throughout the entire period of the delay in filing her claim for benefits and accordingly is not entitled to have her claim antedated.

**Issue 2: If the Appellant had good cause for the delay, would she have qualified to receive benefits on September 27, 2015?**

[22] Since the Tribunal has found that the Appellant did not show good cause for the delay in filing her initial claim throughout the entire period, the question of whether she would have qualified for benefits on the earlier date does not need to be considered as the appeal cannot succeed without both factors met. For that reason, the Tribunal will not make a further finding about her qualification for benefits on the earlier date.

**CONCLUSION**

[23] The claim cannot be antedated because the Appellant did not show that, throughout the entire period of delay, she did what a reasonable person in her situation would have done to satisfy herself as to her rights and obligations. It was unnecessary to consider whether the Appellant would have qualified on the earlier date.

[24] The appeal is dismissed.

Catherine Shaw  
Member, General Division – Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. L., Representative for the Appellant

## ANNEX

### THE LAW

#### Employment Insurance Act

**10 (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.