



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. H. v. Canada Employment Insurance Commission*, 2018 SST 101

Tribunal File Number: GE-17-2535

BETWEEN:

**B. H.**

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: Candace Salmon

HEARD ON: February 27, 2018

DATE OF DECISION: March 8, 2018

## **DECISION**

### **DECISION**

[1] The appeal is dismissed. The claim cannot be antedated because the Appellant has not shown good cause for the entire period of the delay in applying for benefits.

### **OVERVIEW**

[2] The Appellant applied late for benefits, because she did not know she could qualify for employment insurance. The claim was filed in February 2017 and the Appellant last worked in December 2015. She sought antedating to July 31, 2016. The claim and reconsideration were denied by the Canada Employment Insurance Commission (the Respondent). The Tribunal must decide whether the Appellant had good cause for delaying her application.

### **PRELIMINARY MATTERS**

[3] The Appellant's husband joined her at the hearing as a witness, and both gave solemn affirmations that their evidence would be the truth.

### **ISSUE**

Does the Appellant qualify to have her claim antedated to July 31, 2016?

### **ANALYSIS**

[4] Antedate, the backdating of initial claims, is explained at subsection 10(4) of the Employment Insurance Act (Act). The Act states that a claim shall be antedated if (1) there was good cause for the delay in filing throughout the entire period of delay, and (2) the claimant shows that he or she qualified to receive benefits on the earlier date.

#### **Did the Appellant have good cause for the delay in filing throughout the period?**

[5] The Appellant must show good cause for failing to apply for benefits, throughout the entire period of delay. In this case, the period of delay is from July 31, 2016-February 10, 2017.

[6] The Appellant worked during a one-year university co-op term from January-December 2015. She returned to school in January 2016, and became pregnant in approximately March 2016. She gave birth in December 2016, but did not file for employment insurance benefits until February 10, 2017. She requested her claim be antedated to July 31, 2016.

[7] The Appellant stated she delayed in applying for employment insurance benefits until February 2017 because she was unaware that she could qualify for them based on her co-op work experience. The Appellant stated in the file that she wanted the claim antedated because she first started experiencing medical symptoms from her pregnancy in July 2016. At the hearing, her husband indicated he prepared the application forms in February 2017 and they requested antedating to July 31, 2016 because they were advised by a Service Canada employee that the Appellant may have qualified at that time.

[8] Good cause is not the same as having a good reason, or a justification for the delay. The test for good cause is whether, throughout the entire period of delay, a claimant can 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).

[9] The Tribunal finds the Appellant did not show good cause for the delay in filing an application for benefits.

[10] The Appellant stated to the Respondent that she did not know that maternity benefits were paid by Service Canada, so she did not file her claim earlier. She also submitted to the Respondent that she did not consult with her human resources department or do any research while pregnant to find out information regarding any rights she may have to employment insurance benefits. While the Appellant indicated she did not know maternity leave benefits were available, her husband gave evidence that the couple had a child in 2012 but the Appellant had not worked so they knew she would not qualify and they did not apply at that time. The Appellant then confirmed that she did know maternity benefits existed, but reiterated that she did not know she could qualify in 2016.

[11] While the Tribunal finds the Appellant did know that maternity benefits existed, even if she had not known, ignorance of law even coupled with good faith is not enough to establish

good cause (*Canada v. Kaler*, 2011 FCA 266). At the same time, ignorance of the law does not preclude a finding of good cause, as long as the claimant can show that he or she acted in a reasonable manner (*Albrecht, supra*). Ultimately, there is a duty of care on claimants to make reasonable efforts to obtain benefit information (*Pirotte v. Unemployment Insurance Commission et al.* A-108-76). It is not sufficient to rely on the Appellant's good faith and total unfamiliarity with the law (*Attorney General of Canada v. Carry*, 2005 FCA 367). Since the Appellant cannot rely on ignorance of the law to show good cause for the delay in filing her initial claim, she has the onus of proving that she at least took reasonable steps in a timely fashion to discharge her obligation (*Attorney General of Canada v. Innes*, A-108- 10).

[12] The Tribunal finds the reasons the Appellant gave for the delay did not demonstrate "good cause," as explained in *Albrecht*. A "reasonable person" in her situation would have enquired about her benefit entitlement, and it is not reasonable to have failed to do this when there are so many channels—phone, in person, internet—available, and because she knew the benefits existed.

[13] The Appellant also gave evidence that she experienced illness during her pregnancy, but that she completed her program at school and was not hospitalized. A medical inability to apply would be a consideration if the circumstance was exceptional, but in this case the Appellant continued to go to school and was not under any physical or mental medical condition which would have precluded her acting as a reasonable person in these circumstances. The Appellant admitted that her medical issues did not prevent her from seeking information from Service Canada regarding benefits.

[14] The Courts have qualified the "reasonable person" test by noting that if a claimant did not act like a reasonable and prudent person, consideration should also be given to whether there were any exceptional circumstances (*Canada (AG) v. Caron*, [1986] 69 N.R. 132 (FCA)). In this case, no exceptional circumstances exist. The Appellant's "difficult" pregnancy is not supported by evidence as being an exceptional circumstance to justify failing to enquire about benefit entitlements. The Appellant stated she had a large baby and was ill from approximately July 2016 until she gave birth, but she missed no time from her program and was never

hospitalized. The Appellant also admitted that her medical condition did not impact her ability to inquire about her benefit entitlement.

[15] While the Appellant may have acted in good faith and with the best intentions, it is still possible to find that her reasons do not constitute good cause within the meaning of the Act (*Shebib v. Attorney General of Canada*, 2003 FCA 88). The Tribunal understands the Appellant's submission that it is unfair and unjust that she should be denied benefits when she did not know that she was entitled to apply; however, the Appellant did not act as a reasonable person in her situation would have. The Appellant had multiple opportunities to obtain more information regarding her entitlement to benefits, and while there is conflicting evidence on file, it became clear during the hearing that she did know in 2016 that maternity benefits existed. The Appellant chose not to enquire as to whether she would qualify, and that is not a mistake the Tribunal is able to fix. The Courts have confirmed that good cause is a strict duty:

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 (AG) v. Scott* – 2008 FCA 145

### **Did the Appellant qualify for benefits on the earlier date?**

[16] Given that the Tribunal has determined the Appellant did not have just cause throughout the entire period of delay in filing for benefits, the question of whether the Appellant would have qualified on the earlier date is irrelevant as the appeal cannot be successful. The Tribunal will not make a finding on this criterion.

### **CONCLUSION**

[17] The claim cannot be antedated because the Appellant did not show that, throughout the entire period of delay, she did what a reasonable and prudent person in her situation would have done to satisfy herself as to her rights and obligations, nor did any exceptional circumstances exist to justify the delay. It was not necessary to consider whether the Appellant would have qualified on the earlier date.

[18] The appeal is dismissed.

Candace Salmon  
Member, General Division - Employment Insurance Section

## **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.

#### **Employment Insurance Regulations**