



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. A. v. Canada Employment Insurance Commission*, 2018 SST 339

Tribunal File Number: GE-17-1992

BETWEEN:

**M. A.**

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: Katherine Wallocha

HEARD ON: March 21, 2018

DATE OF DECISION: April 13, 2018

## **DECISION**

[1] The appeal is dismissed. The Tribunal finds that the claimant had not accumulated enough hours of insurable employment in his qualifying period to establish a benefit period for employment insurance (EI) benefits. Further, the claimant has not shown good cause for the entire period of the delay in applying for EI benefits; therefore, the antedate request is refused.

## **OVERVIEW**

[2] The claimant applied for EI benefits on February 16, 2017; however, his last day of work was March 14, 2016. The claimant requested that his claim for EI benefits be antedated explaining that he was forced to stop working because he was going through the permanent residency process and it took longer than expected. The Canada Employment Insurance Commission (Commission) determined that the claimant did not qualify for EI benefits. Additionally, the Commission refused the antedate request. The claimant appealed the Commission's decisions to the Social Security Tribunal (Tribunal).

## **PRELIMINARY MATTERS**

[3] If a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing according to subsection 12(1) of the *Social Security Tribunal Regulations*.

[4] Information retrieved from Canada Post shows the claimant signed for the Notice of Hearing on January 17, 2018. Based on this evidence, the Tribunal is satisfied that the claimant received notice of the hearing and therefore, will proceed with the hearing in the claimant's absence. The Tribunal also notes that the claimant did not make any contact with the Tribunal immediately following the hearing to request an adjournment or express any desire to participate in the hearing.

## **ISSUES**

1. Did the claimant qualify for EI benefits?
2. Did the claimant qualify to have his claim antedated to March 15, 2016?

## ANALYSIS

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

### **1. Did the claimant qualify for EI benefits?**

[6] To qualify for EI benefits, the claimant must have accumulated the required number of insurable hours of employment in the applicable qualifying period (*Canada (Attorney General) v. Terrion*, 2013 FCA 97).

#### ***When is the applicable qualifying period?***

[7] The Tribunal finds that the applicable qualifying period is the 52-week period immediately before the beginning of a benefit period under paragraph 8(1)(a) of the *Employment Insurance Act* (EI Act). Further, the applicable benefit period begins on the Sunday of the week in which the initial claim for EI benefits is made according to paragraph 10(1)(b) of the EI Act.

[8] The claimant applied for EI benefits on February 16, 2017; therefore, his benefit period was established the Sunday before the date of his application or February 12, 2017. From this, the Tribunal confirms that the claimant's qualifying period is the 52-week period before February 12, 2017, or from February 14, 2016, to February 11, 2017.

[9] The qualifying period can be extended under paragraph 8(2)(a) of the EI Act. The claimant indicated on his application for EI benefits that he had been in receipt of Worker's Compensation Benefits (WCB). If the claimant was in receipt of WCB during his qualifying period, the claimant's qualifying period could be extended by the number of weeks he was incapable of work because of illness or injury. In a phone call with the Commission, the claimant stated that he received WCB in 2015. The Tribunal finds the period the claimant was in receipt of WCB is before his qualifying period and therefore cannot be used to extend the qualifying period. The Tribunal concludes that the claimant's qualifying period is from February 14, 2016, to February 11, 2017.

***Did the claimant accumulate the required number of hours of insurable employment?***

[10] Hours which are accumulated outside the qualifying period cannot be used to qualify the claimant for benefits (*Haile v. Canada (Attorney General)*, 2008 FCA 193).

[11] The Tribunal finds that the claimant did not have enough hours of insurable employment in his qualifying period to qualify for EI benefits. The Tribunal accepts the Commission's evidence that the claimant lived in a region with an unemployment rate of 10.20% at the time he applied for EI benefits and he had accumulated 144 hours of insurable employment in his qualifying period. The claimant has not disputed the rate of unemployment or the number of hours of insurable employment. Therefore, the Tribunal confirms that the minimum number of hours of insurable employment the claimant required in order to receive EI benefits was 525 hours according to the Table in subsection 7(2) of the EI Act.

[12] The claimant submitted that the four week requirement to apply for EI benefits should apply to the four weeks after he received permanent residency status and the insurable hours he accumulated prior to March 16, 2016, should be accepted to qualify for EI benefits.

Unfortunately, the requirements of the EI Act are clear and do not provide any exceptions or allow for any discretion. The claimant applied for EI benefits 11 months after he became unemployed and this left him without enough hours of insurable employment to qualify for EI benefits. The Tribunal concludes that the claimant does not have enough hours to qualify for EI benefits because he had 144 hours of insurable employment in his qualifying period but he needed 525 hours to qualify.

**2. Did the claimant qualify to have his claim antedated to March 15, 2016?**

[13] The antedating or backdating of a claim for EI benefits is possible under subsection 10(4) of the EI Act. The claimant must show that

- a) there was good cause for the delay, throughout the entire period of the delay; and
- b) he qualified for EI benefits on the earlier day.

[14] 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).

***a) Has the claimant shown good cause for the delay?***

[15] The claimant stated that he was laid off from his job on March 14, 2016, because his permanent residency application was denied, making him ineligible to work in Canada. He was granted his permanent residency on January 19, 2017, and he applied for EI benefits on February 16, 2017, four weeks after being granted permanent residency status.

[16] To prove good cause for the delay in filing an initial claim for EI benefits, claimants must demonstrate that they did what a reasonable and prudent person would have done in the same circumstances to satisfy themselves as to their rights and obligations under the EI Act (*Kamgar v. Canada (Attorney General)*, 2013 FCA 157).

[17] The Tribunal finds that the claimant has not demonstrated that he did what a reasonable and prudent person would have done in the same circumstances.

[18] The claimant stated several times that he did not know anything about the EI programs and the time requirements. He stated that neither Citizenship and Immigration Canada nor his employer told him that he could apply for EI benefits when he was laid off. He stated that he has been a temporary worker for eight years and he did not know that he would be able to claim EI benefits. The Commission asked the claimant if he ever noticed the regular deductions from his paycheques for EI or Canada Pension Plan; he responded that he did not know there was such a thing as EI and only learned about it when his accountant told him when he was doing his taxes.

[19] The Tribunal finds that the claimant knew about EI benefits when he had his taxes prepared in 2016 but he delayed until February 16, 2017, to apply for EI benefits. On his request to antedate his claim, which he submitted on the same day as his application for EI benefits, he stated that he started having an accountant prepare his taxes in 2016 and this is when his accountant told him about EI benefits. He later stated his accountant gave him lots of advice on the different kinds of benefits that exist. The claimant stated on his Request for Reconsideration dated March 17, 2017, that he was ineligible to work in Canada and ineligible to apply for EI

benefits. Following his Request for Reconsideration, the claimant stated that his accountant advised him about EI benefits in 2017. He added that he contacted Canada Revenue Agency (CRA) about child tax benefits, and they advised him that he is not entitled to these benefits. He assumed that if he was not receiving benefits from CRA, he will not receive benefits from other government departments. While the claimant stated that his accountant advised him about EI benefits in 2017, the Tribunal is convinced that the claimant was advised of benefits that existed by his accountant in 2016.

[20] The Tribunal finds that the claimant has not shown good cause for the delay from when his accountant advised him about EI benefits in 2016 to when he applied for EI benefits in February 2017. Good cause for the delay is not the same as having a good reason, or a justification for the delay. The claimant knew about EI benefits in 2016, but he did not apply or contact Service Canada. A reasonable person would have called Service Canada and would not rely on a denial of another type of benefit by another governmental organization.

[21] The claimant submitted that he applied for EI benefits four weeks after he became eligible. The time between March 15, 2016, when he was denied permanent residency, and January 19, 2017, when he was granted permanent residency, should not be considered in calculating the “within four weeks” requirement to apply for EI benefits. He stated the four weeks requirement should apply to the four weeks after he became eligible. While the Tribunal respects this argument, the fact remains that the claimant was not prevented from applying for EI benefits or at the very least, enquiring whether he was eligible.

[22] The claimant further submitted that he has a family to feed and two children to support. He has paid into EI for years without asking for support because he did not need it, but now that he does, he cannot access it. However, simply paying into the EI program is not a guarantee that EI benefits will be payable. Claimants are still required to promptly file a claim for EI benefits and to satisfy the necessary conditions of eligibility.

***b) Did the claimant qualify for EI benefits on the earlier day?***

[23] The law requires that the claimant meet both factors in order to have his claim antedated. Since the claimant has not shown good cause for the entire duration of the delay, the Tribunal

finds that the claimant's appeal cannot succeed. Therefore, the Tribunal will not consider whether he qualified for EI benefits on the earlier date.

## **CONCLUSION**

[24] The claimant waited almost 11 months to apply for EI benefits after losing his employment and therefore he does not have enough hours of insurable employment in his qualifying period to qualify for EI benefits under section 7 of the EI Act.

[25] The claimant did not demonstrate good cause throughout the entire period of the delay from March 14, 2016, to February 16, 2017. The claimant did not show that, on the balance of probabilities, he did what a reasonable and prudent person in his circumstances would have done to satisfy himself as to his rights and obligations. Therefore, the claimant's request to antedate his claim for EI benefits under subsection 10(4) of the EI Act is refused.

[26] The appeal is dismissed.

*K. Wallocha*

Member, General Division - Employment Insurance Section

## ANNEX

### THE LAW

#### *Employment Insurance Act*

**7 (1)** Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

**(2)** An insured person qualifies if the person

**(a)** has had an interruption of earnings from employment; and

**(b)** has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person.

#### TABLE

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in Qualifying Period
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

**8 (1)** Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

**(a)** the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and

**(b)** the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

**(2)** A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

**(a)** incapable of work because of a prescribed illness, injury, quarantine or pregnancy;

**(b)** confined in a jail, penitentiary or other similar institution and was not found guilty of



the offence for which the person was being held or any other offence arising out of the same transaction;

(c) receiving assistance under employment benefits; or

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

**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.

(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.