



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. R. v. Canada Employment Insurance Commission*, 2018 SST 343

Tribunal File Number: GE-17-2085

BETWEEN:

**R. R.**

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: February 14, 2018

DATE OF DECISION: April 15, 2018

## REASONS AND DECISION

### DECISION

[1] The appeal is dismissed. The Tribunal finds that the claimant has not shown good cause for the entire period of the delay in applying for Employment Insurance (EI) benefits; therefore, the antedate request is refused.

### OVERVIEW

[2] The Appellant (claimant) applied for EI benefits on November 22, 2016, and she requested that her claim be antedated to her last day of work on November 30, 2015. The Respondent, the Canada Employment Insurance Commission (Commission) denied the antedate request because it was determined the claimant did not show good cause for the delay in filing her initial claim for EI benefits. She stated that the reason why she did not apply immediately was because she was going to buy into the business she was working for and was focused on her self-employment. However, in the Notice of Appeal and at the hearing, the claimant stated that the reason for the delay was because her thinking was distorted due to a diagnosis of mental illness.

### ISSUE

[3] Does the claimant qualify to have her claim antedated to November 30, 2015?

### ANALYSIS

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

1. she qualified for EI benefits on the earlier day; and
2. there was good cause for the delay, throughout the entire period of delay.

[5] 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).

[6] The burden of proof rests on the claimant (*Canada (Attorney General) v. Kaler*, 2011 FCA 266).

**Did the claimant have enough hours to qualify for EI benefits on the earlier date?**

[7] Canada Revenue Agency (CRA) has exclusive jurisdiction to make a determination on how many hours of insurable employment a claimant possesses for the purposes of the EI Act (*Canada (Attorney General) v. Romano*, 2008 FCA 117).

[8] The Tribunal finds that the claimant did qualify for EI benefits on the earlier date of November 30, 2015. While initially the Commission determined that the claimant did not qualify on the earlier date, a CRA ruling decided that the claimant's hours of employment were insurable.

[9] The parties agree that the claimant needed 700 hours of insurable employment in order to qualify and she had accumulated 2080 hours of insurable employment. Therefore, the Tribunal concludes that the claimant qualified for EI benefits at the earlier date.

**Did the claimant have good cause for the delay throughout the entire duration of the delay?**

[10] 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).

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

[12] The claimant's initial reason for the delay was that she was going to buy into the business so she did not apply for EI benefits when her employment contract ended on November 30, 2015. When she realized in February 2016 that she would not become an owner of the business, she did not apply for EI benefits because she thought the timeframe to apply had passed. It was only in November 2016, when the claimant was in a Service Canada office about her passport that she thought to ask about EI benefits and she was told to apply. The Tribunal finds that the claimant delayed almost a year from her last day of work to when she applied for EI benefits and

during that year, she did not contact the Commission or Service Canada to learn of her rights and responsibilities about EI benefits.

[13] On May 25, 2017, the claimant was contacted by the Commission and again she explained that she did not apply for EI benefits when her employment ended because she wanted to buy in as a partner and focus on her career in self-employment. At this time, the claimant stated that she works with a therapist for various reasons but she stated that this did not prevent her from contacting the Commission or applying for EI benefits repeating that she thought she would buy into a partnership and therefore, she did not apply for EI benefits.

[14] Good cause is not the same as having a good reason, or a justification for the delay. The Tribunal finds that the claimant's intent on becoming a partner in the business or that she thought the timeframe had passed to apply might be a good reason but it does not demonstrate good cause for the delay in filing an application for EI benefits. It is the claimant's responsibility to protect her claim for EI benefits and if there is confusion, it is her responsibility to contact the Commission promptly to verify her rights and obligations under the EI Act. A reasonable person in her situation would have enquired about her benefit entitlement either by phone, in person, or online.

[15] However, 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*, A-395-85).

[16] On June 20, 2017, the claimant submitted her Notice of Appeal to the Tribunal stating that she did not apply for EI benefits until November 2016 because she was diagnosed with Borderline Personality Disorder. She explained that this mental health disorder impacts the way you think and feel about yourself and others, causing problems functioning in everyday life. She stated that one of the symptoms is rapid changes in self-identity and self-image that includes shifting goals and values, and this is why she did not apply.

[17] The claimant testified that her whole case is around Borderline Personality Disorder and how it can affect judgment. She stated that her mental illness does not mean she cannot function;

she just has to work really hard to live her life without her intense emotions. She stated that her thinking was distorted and her judgment was not sound.

[18] While the Tribunal understands that the claimant's mental illness can cause her thinking to become distorted, the Tribunal is not convinced that her mental illness is considered exceptional circumstances that prevented her from doing what a reasonable and prudent person would have done in similar circumstances. The claimant was aware of EI benefits. She completed her Record of Employment and understood that because she was to become self-employed, she was not entitled to EI benefits. She informed the Commission that by February 2016, she knew she would not become an owner and needed to be looking for other income, but she did not apply for EI benefits because she thought the deadline to apply had passed. The claimant testified that she had become emotionally attached to the idea of becoming an owner. She also testified that she did her due diligence in terms of looking for work. The Tribunal finds that if the claimant was capable of looking for work then she was no longer emotionally attached to the idea of becoming an owner; therefore, she was capable of contacting the Commission or Service Canada and asking about or applying for EI benefits.

[19] The claimant told the Commission that she was under the care of a therapist but this did not prevent her from asking about or applying for EI benefits. She testified that she told the Commission this because she had the means to apply meaning she could drive and could go online, but her judgment was not sound. However, 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). Since the claimant had the means to communicate with the Commission, and needed other income so she was looking for work, the Tribunal finds that the claimant's decision not to enquire about or apply for EI benefits was not due to her mental illness but was a result of thinking that she would not qualify because the deadline had passed.

[20] The claimant submitted that she is only asking for the same benefits given to other Canadians while she tried to find work. She testified that she learned from the news and from others who were receiving EI benefits that she could have extended benefits and she feels it would be fair to allow her the antedate request. The Tribunal respects these arguments; however, it does not change the fact that the claimant did not apply for EI benefits for a year following the

end of her employment contract, and at no time during this period did she contact the Commission. Further, the claimant has not proven that exceptional circumstances existed that impacted her ability to enquire about her rights and obligations under the EI Act.

**CONCLUSION**

[21] The Tribunal concludes that while the claimant did qualify for EI benefits at the earlier date, she has not proven good cause for the delay in filing her claim for EI benefits. Accordingly, she is not entitled to have her claim antedated under subsection 10(4) of the EI Act.

[22] The appeal is dismissed.

*K. Wallocha*  
Member, General Division - Employment Insurance Section

HEARD ON:	February 14, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. R.

## **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.