



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. M. v. Canada Employment Insurance Commission*, 2018 SST 365

Tribunal File Number: GE-17-2803

BETWEEN:

C. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: March 21, 2018

DATE OF DECISION: May 2, 2018

DECISION

The appeal is dismissed. The Appellant has not shown he had good cause for the delay throughout the entire period and he did not act like a reasonable and prudent person in the same circumstances to make sure of their rights and obligations under the Act.

OVERVIEW

[1] The Appellant established a claim for employment insurance benefits on March 5, 2017. He did not file his reports in the time allowed from his first claim because his claim was in progress and he believed he had to wait until it was finalized. He stated that when it was finalized and he tried to make his reports it was too late. He subsequently renewed his claim effective May 12, 2017. The Canada Employment Insurance Commission (Respondent) disentitled the Appellant benefits from March 3, 2017, to May 12, 2017, because he did not show good cause for not returning his reports within the allowable period of time.

ISSUES

[2] Did the Appellant file his reports in the allowable time?

[3] Did the Appellant show he had good cause for the delay throughout the entire period?

[4] Should the Appellant be disentitled to benefits for failing to comply with a condition or requirement as long as the condition or requirement is not fulfilled or complied with?

ANALYSIS

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

Issue 1: Did the Appellant file his reports in the allowable time?

[6] No, the Tribunal finds the Appellant did not file his reports within the allowable time. The Appellant filed his application on March 30, 2017, and there is no evidence to show he attempted to make any reports prior to when he filed his renewal application on May 15, 2017, a six-week delay.

[7] The Appellant conceded he didn't file his reports on time because he was waiting for his claim to be processed and by the time his claim was finalized it was too late and he had returned to work on April 17, 2017. He later submitted a renewal application on May 12, 2017.

[8] Section 26 of the Regulations imposes two time limits. One for which the weekly or bi-weekly reporting cards are to be filed during a continuing claim and the other for an application for a renewal claim. When a claimant misses a deadline and then seeks to have the cards or renewal application treated as having been made on time, the issue of backdate arises.

[9] "These provisions require a claimant to act diligently in making a claim for unemployment benefits. According to subsection 26(1) of the Regulations, a claim for benefits for a given week of unemployment in a benefit period must be made within three weeks after the week of which benefits are claimed" (*Canada (A.G.) v. Kokavec* 2008 FCA 307).

[10] Subsection 50(1) of the Act states a claimant who fails to 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.

Issue 2: Did the Appellant show he had good cause for the delay throughout the entire period?

[11] No, the Appellant has not shown he had good cause for the delay throughout the entire period. The Appellant did not provide any reasonable explanation as to why he did not contact Service Canada by telephone or by going in person, either before he returned to work or before he filed a renewal application, which would have been a reasonable thing to do.

[12] Claimants are expected to take reasonably prompt steps to determine their entitlement to receive benefits and to make sure of their rights and obligations under the Act (*Canada (A.G.) v. Carry*, 2005 FCA 367).

[13] In order to establish "good cause", a claimant must demonstrate that he did what a reasonable and prudent person would have done in the same circumstances (*Canada (A.G.) v. Albrecht*, 1985, FC 710) (*Canada (A.G.) v. Caron*, 1986) (*Canada (A.G.) v. Smith*, 1993).

[14] The Tribunal finds the Appellant provided reasons for a period from March 3, 2017, to April 17, 2017, until he returned to work; however he did not provide any reason from the time he returned to work and when he made his renewal application on May 12, 2017.

[15] The Tribunal finds that the Appellant was familiar with the employment insurance program as he had been on claim several times and he conceded that there was nothing that prevented him from contacting Service Canada to find out the status of his claim, or to discuss the missing record of employment.

[16] The Tribunal finds that even if the Appellant thought he couldn't fill out his reports while his claim was in progress or without an access code; he made no attempt to do enquire with Service Canada as to why it was taking so long, or why he was receiving these messages.

[17] The Tribunal finds that the Appellant's provided inconsistent statements as to when he the messages he received when he checked his account online. He initially stated that when he checked his account it indicated that his claim was in progress, and then he stated that it kept saying he couldn't do reports so he had to refile. He also stated that his account kept saying there was no record of employment and then when he received notification and he tried to do his reports but he couldn't. The Appellant conceded that when he was notified of the missing record of employment he never made any attempt to contact his employer to find out why Service Canada did not have it.

[18] The Tribunal finds that the Appellant did not act like a reasonable and prudent person in his situation. The Tribunal finds the Appellant received several messages that would have alerted him that there may be issues with his claim and he should have contacted Service Canada to see what was happening with his claim.

[19] The Appellant argued that it's unfair to be denied benefits and it doesn't make sense that he didn't file on time for no reason because he needed the money.

[20] The Tribunal finds there is no evidence to support the Appellant had been treated unfairly. The Tribunal finds that a person is simply not entitled to benefits because they paid into the program, but rather they must meet the criteria in order to collect benefits they are entitled to receive.

Issue 3: Should the Appellant be disentitled to benefits for failing to comply with a condition or requirement as long as the condition or requirement is not fulfilled or complied with?

[21] Yes, the Appellant should be disentitled to benefits because he failed to meet the requirements of completing his report cards in the specified manner.

[22] There is no legal “benefit of the doubt” or in this case on humanitarian grounds which applies in the case of a claimant attempting to justify a request to backdate. However the Tribunal must take into account all the circumstances of the delay when deciding whether or not to grant a back date.

[23] The Tribunal sympathies with the Appellant’s situation; however it does not have the authority to alter the requirements of the Act and must adhere to the legislation regardless of the personal circumstances of the Appellant (*Canada (AG) v. Levesque*, 2001 FCA 304).

CONCLUSION

[24] The Tribunal finds the Appellant is not entitled to benefits between March 6, 2017, to May 12, 2017, as he has failed to show that he had good cause for the delay in filing his reports within the allowable period of time accordance with sections 10(5) and 50 of the *Employment Insurance Act* (Act) and section 26 of the *Employment Insurance Regulations* (Regulations).

[25] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	March 21, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. M., Appellant

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.

(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.

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.

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.