



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. B. v. Canada Employment Insurance Commission*, 2018 SST 1057

Tribunal File Number: GE-17-3858

BETWEEN:

W. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: April 25, 2018

DATE OF DECISION: May 22, 2018

DECISION

[1] The appeal is allowed. The Appellant met the legal test for antedating his initial claim for benefits.

OVERVIEW

[2] The Appellant applied for regular benefits on July 6, 2017, a year after losing his job, and requested that his initial claim be antedated to July 10, 2016. The Respondent refused his request for an antedate, finding that he had not shown good cause for his delay in applying. Good cause is part of the test for an antedate. The Respondent refused him again when he filed a reconsideration request arguing illness as the reason for his delay.

[3] He appealed this decision to the Tribunal. In its submissions to the Tribunal, the Respondent accepted that the Appellant's illness was an exceptional circumstance, and asked that the Tribunal allow an antedate.

PRELIMINARY MATTERS

[4] The Appellant did not appear for his hearing. However, I was authorized to continue with the hearing in his absence, as long as I was sure he had received proper notice of the hearing (subsection 12(1) of the *Social Security Tribunal Regulations*). I was satisfied that he received the Notice of Hearing since he signed for its delivery on March 20, 2018.

[5] I sent a section 32 request to the Respondent, asking for clarification on whether the Appellant would have qualified for benefits on July 10, 2016. The Respondent provided the additional information that he would have qualified for benefits on that date.

ISSUES

[6] **Issue 1: Did the Appellant show good cause for the delay in making his initial claim for benefits throughout the entire period of the delay?**

[7] **Issue 2: Would he have qualified to receive benefits on July 10, 2016, the date he requested for his antedate?**

ANALYSIS

[8] An initial claim for benefits may be antedated, or backdated, to an earlier date under subsection 10(4) of the *Employment Insurance Act* (Act). Claimants must show that they had good cause throughout the entire period of the delay. They must also show that they would have qualified for benefits on the earlier date. The relevant legislation is set out in full in the Annex to this decision.

[9] The Appellant had to show good cause throughout the whole period of his delay in making his initial claim. This period began on July 10, 2016, the day after his last day at work, when he was first eligible to apply for benefits. It ended on July 6, 2017, the date he made his application.

[10] To establish good cause, the Appellant had to show that he did what a reasonable and prudent person in the same circumstances would have done to find out about his rights and obligations (*Attorney General of Canada v. Mauchel*, 2012 FCA 202). The obligation to make an initial claim promptly is seen as very strict. This is why the “good cause” exception is cautiously applied (*Attorney General of Canada v. Scott*, 2008 FCA 145).

[11] The burden of proof rests on the Appellant. He therefore had to show that, barring exceptional circumstances, he took “reasonably prompt steps” to protect his benefits (*Attorney General of Canada v. Carry*, 2005 FCA 367).

Did the Appellant show good cause for the delay in making his initial claim for benefits throughout the entire period of the delay?

[12] Yes. Even though he did not take any action to enquire about his benefits, his circumstances were exceptional, and he therefore acted as reasonable person would have done in his situation. If claimants have not taken “reasonably prompt steps” to follow up on their obligations under the Act, then exceptional circumstances can excuse this lack of action (*Attorney General of Canada v. Somwaru*, 2010 FCA 336).

[13] The Appellant’s mental health challenges demonstrate such exceptional circumstances. He explained that he was unable to interact with the Respondent due to agoraphobia and

glossophobia. These disorders made it difficult for him to leave his home or speak to the Respondent to find out whether he qualified for benefits. He was also unable to make his initial claim. Moreover, the period of incapacitation identified in his family doctor's certificates—June 2016 to June 2017—is almost identical to the period of his delay in applying for benefits. As soon as he recovered, he took steps to file his initial claim. The Respondent now agrees that the Appellant faced exceptional circumstances.

[14] Taking into account these exceptional circumstances, I find that the Appellant met the “good cause” part of the test to receive an antedate.

Would the Appellant have qualified to receive benefits on July 10, 2016?

[15] Yes. The Respondent has confirmed that the Appellant had an interruption of earnings, and that he would have accrued enough insurable hours on that date to qualify for either regular or sickness benefits. The accrual of sufficient insurable hours is the second part of the antedate test.

[16] The Appellant therefore met both parts of the test to receive an antedate under subsection 10(4) of the Act. He showed good cause throughout the entire period of his delay. He would also have qualified for benefits on July 10, 2016, the date he requested for his antedate.

CONCLUSION

[17] The appeal is allowed.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	April 25, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Neither party attended the hearing.

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.