



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *JM v Canada Employment Insurance Commission*, 2018 SST 1434

Tribunal File Number: GE-18-431

BETWEEN:

J. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Yoan Marier

HEARD ON: June 20, 2018

DATE OF DECISION: June 29, 2018

DECISION

[1] The appeal is dismissed on both issues.

OVERVIEW

[2] The Appellant worked as an assistant manager for the company X. On February 13, 2016, he was suspended from his employment for a month. He applied for Employment Insurance benefits on May 3, 2016, in connection with this suspension. A benefit period was established effective May 1, but the Canada Employment Insurance Commission (Commission) denied the Appellant's request to antedate the claim to February 7, 2016, because he had failed to show good cause for the delay in filing his initial claim for benefits.

[3] The Appellant was dismissed from his employment on September 6, 2016. He waited until October 27, 2017, before making a renewal claim for benefits. The Commission denied the Appellant's request to antedate the claim to September 4, 2016, because he had failed to show good cause for the delay in filing his renewal claim for benefits.

[4] The Appellant submits that he had good cause for the delay in both cases. He argues that he was deeply emotionally affected by his suspension and dismissal. Additionally, he was already challenging the employer's decisions before the Commission des normes, de l'équité, de la santé et de la sécurité du travail [Quebec's labour standards board] (labour standards) and did not think that he was entitled to benefits, since he had been a pensioner for some years.

ISSUES

[5] Can the initial claim for Employment Insurance benefits be antedated to February 7, 2016? Did the Appellant have good cause for the delay of more than two months in filing his claim?

[6] Can the renewal claim for Employment Insurance benefits be antedated to September 4, 2016? Did the Appellant have good cause for the delay of about 13 months in filing his claim?

ANALYSIS

[7] The relevant statutory provisions appear in the annex of this decision.

Antedate of the Initial Claim

Can the initial claim for Employment Insurance benefits be antedated to February 7, 2016? Did the Appellant have good cause for the delay of more than two months in filing his claim?

[8] A late initial claim for benefits will be considered as having been made on an earlier day if the claimant shows that they 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. (Section 10(4) of the *Employment Insurance Act*)

[9] According to the Federal Court of Appeal, to show good cause for filing a claim for benefits late, a claimant must show that they acted as a reasonable and prudent person would have acted in similar circumstances throughout the entire period of the delay. (*Canada (Attorney General) v Burke*, 2012 FCA 139)

[10] The Federal Court of Appeal has also confirmed that the obligation and duty to promptly file a claim are seen as very demanding and strict. This is why the “good cause for delay” exception is cautiously applied. As a result, antedating is a benefit to be applied as an exception. (*Canada (AG) v Brace*, 2008 FCA 118)

[11] Unless there are exceptional circumstances, an applicant has an obligation to take reasonably prompt steps to determine their entitlement to benefits and to ensure their rights and obligations under the Act. Ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause. (*Canada (Attorney General) v Kaler*, 2011 FCA 266)

[12] Based on the information on file, it is clear that the Appellant satisfied the basic conditions for receiving benefits when he was suspended in February 2016. The issue in this case is rather whether there was good cause for the delay of a few months in filing the claim for benefits. For the reasons that follow, the Tribunal finds that the Appellant did not have good cause for his delay.

[13] In this case, on February 13, 2016, the Appellant was suspended from his employment for a month. He did not apply for benefits until May 3, 2016, two and a half months after his suspension began. The Commission established the benefit period effective May 1, 2016; as a result, the Appellant never received benefits in connection with his period of suspension.

[14] To justify this delay, the Appellant submits that he was deeply emotionally affected by his suspension. In fact, at the hearing, he testified at length about his work environment, which had deteriorated over the last year; the fact that the employer had seemed to want to get rid of him despite his 32 years of service; and the fact that he had been falsely blamed for certain errors.

[15] The Appellant also submits that he was challenging his suspension before labour standards during that period. Additionally, he thought that he was not entitled to benefits, since a friend had told him that pensioners like him were not entitled to Employment Insurance.

[16] The Tribunal believes that the Appellant is sincere when he says that his suspension greatly affected him and that he was nervous and stressed during that period. However, filing a claim for benefits is relatively simple and takes little time. The Tribunal has difficulty understanding how the Appellant, even affected by his suspension, was unable to take a few minutes to file a claim on time.

[17] This is especially the case given that, during that period, the Appellant was able to take the time to consult a lawyer and file a complaint with labour standards over his suspension, which he considered wrongful (GD7-37 to 47).

[18] As the representative argues, it is true that, historically, Umpires showed some flexibility regarding claimants who were waiting for a decision or payment related to compensation and who were late in filing their claim for benefits for that reason (see, for example, CUBs 12762, 20094, and 19371).

[19] However, in this regard, the Federal Court of Appeal has, on several occasions, confirmed the principle that an application for benefits should be made in a timely fashion. This requirement is meant to allow the Commission to monitor the administration of benefits and to

effectively determine whether a claimant was available for a new job as soon as they stopped working. (See, for example, *Chalk v Canada (AG)*, 2010 FCA 243; and *Shebib v Canada (AG)*, 2003 FCA 88.)

[20] As a result, the Tribunal finds that it was up to the Appellant to file his claim for benefits as soon as possible, even though he was waiting for his complaint with the CNESST [Quebec's labour standards board] to be resolved, which can take a very long time. Filing that complaint did not prevent him from filing a claim for Employment Insurance benefits; in fact, these are two very different processes that do not have the same objective.

[21] The Federal Court of Appeal has, on several occasions, confirmed that a claimant's reliance on rumours, unverified information, or unconfirmed assumptions does not constitute good cause. (See, for example, *Trinh v Canada (AG)*, 2010 FCA 335; and *Attorney General of Canada v Rouleau*, A-4-95.)

[22] Therefore, the Appellant's reliance on the opinion of a friend who told him that he was not entitled to benefits because he was a pensioner is not good cause for delaying in filing a claim for benefits. In this regard, it is further worth noting that the Federal Court of Appeal has also established that not knowing you are entitled to benefits because you are collecting a pension does not constitute good cause (*Canada (AG) v Somwaru*, 2010 FCA 336). At the hearing, the Appellant confirmed that he did not check with or request information from the Commission during the period of the delay.

[23] The Tribunal does not doubt the Appellant's good faith in this case, but that is not in issue here. As required by the case law, the Tribunal must, instead, consider whether, based on the facts of this case, the Appellant acted as a reasonable person would have acted in similar circumstances. Unfortunately, the Tribunal finds that this is not the case.

[24] In the Tribunal's view, a reasonable person would have promptly checked with the Commission or other reliable sources to find out about their rights and obligations regarding the Employment Insurance program, instead of relying on a friend's opinion. The Tribunal does not find that the Appellant's stress or nervousness due to the measures taken against him by his employer constitutes an exceptional circumstance exempting him from the requirement that a

claimant must normally take reasonably prompt steps to determine whether they are entitled to Employment Insurance benefits and what their obligations are under the Act. (*Kaler, supra*)

[25] The Tribunal finds that the Appellant has not shown good cause for the delay in filing his initial claim. The claim cannot be antedated. The appeal is dismissed on this issue.

Antedate of the Renewal Claim for Benefits

Can the renewal claim for Employment Insurance benefits be antedated to September 4, 2016? Did the Appellant have good cause for the delay of about 13 months in filing his claim?

[26] The Act states that, when a claimant makes a claim for benefits, other than an initial claim, after the prescribed time, the claimant must provide “good cause” for the delay so that the claim can be considered as having been made on an earlier day than the day it was actually made. (section 10(5) of the Act)

[27] To prove that they had good cause throughout the entire period of the delay, a claimant is required to show that, barring exceptional circumstances, they acted as a reasonable and prudent person would have acted in similar circumstances to satisfy themselves as to their rights and obligations under the Act. (*Canada (AG) v Persiiantsev*, 2010 FCA 101; *Canada (AG) v Kokavec*, 2008 FCA 307; *Canada (AG) v Paquette*, 2006 FCA 309)

[28] The Appellant lost his job on September 6, 2016. At the time, he was still covered by the benefit period established on May 1, 2016, following his initial claim. However, his renewal claim for benefits was not filed until October 27, 2017, that is, more than 13 months after his employment ended.

[29] The Appellant’s reasons for the delay in filing his renewal claim for benefits are similar to those for the delay in filing his initial claim. The Appellant submits that he was deeply emotionally affected by his dismissal after 32 years of service. Moreover, he was in the middle of challenging his dismissal before labour standards during that period.

[30] Additionally, the Appellant submits that he thought he was not entitled to benefits, primarily because a friend had told him that pensioners like him were not entitled to Employment Insurance benefits, but also because the Commission had never followed up with

him about the claim for benefits filed in May 2016. With no response or follow-up from the Commission following his initial claim, he assumed that his friend was right and that he was, in fact, not entitled to benefits.

[31] The Tribunal does not doubt the Appellant when he says that his dismissal caused him emotional shock and a lot of stress. However, it would have been very simple for the Appellant to ask the Commission to reactivate his claim for benefits. Even though the Appellant was clearly affected by the situation, the Tribunal finds it unlikely that he was in such a bad state that it was impossible for him to make his renewal claim for benefits for almost 13 months.

[32] This is especially the case given that, during that period, the Appellant was able to pursue a complaint process with labour standards in connection with his dismissal, which he considered wrongful (GD7-3 to 7).

[33] As in the previous section, the Tribunal fails to see how filing that complaint prevented him from filing a claim for Employment Insurance benefits. These are two different processes that do not have the same objective. In addition, as the above-mentioned case law confirms, it is important that the Commission be informed of the end of a claimant's employment as soon as possible so that it can properly administer the Employment Insurance program. It was therefore unreasonable to wait for a complaint process to be resolved—which could take months, if not years—before filing the claim for benefits.

[34] As mentioned earlier, the Appellant's reliance on the opinion of a friend who told him that he was not entitled to benefits because he was a pensioner is not good cause for delaying in filing his claim for benefits. A reasonable person would have inquired with reliable sources about their rights and obligations.

[35] The fact that the Appellant did not receive any response from the Commission following his initial claim filed in May 2016 cannot be considered good cause for delaying the renewal claim for benefits either. The Tribunal finds that, faced with no response, a reasonable person would have quickly contacted the Commission to follow up on the claim for benefits.

[36] The delay at issue was of more than 13 months, which is considerable. During that period, the Appellant did not contact or follow up with the Commission about his rights and obligations regarding the Employment Insurance program. It was not until the Appellant contacted the Commission in October 2017 for a completely different reason (GD3-21) that he was told that he was potentially entitled to benefits and could ask for his claims to be antedated.

[37] Again, the Tribunal does not doubt the Appellant's good faith in this case. But, ultimately, it must be considered whether, based on the facts of this case, the Appellant acted as a reasonable person would have acted in similar circumstances. Unfortunately, the Tribunal finds that this is not the case.

[38] In the Tribunal's view, a reasonable person would not have waited 13 months before trying to check with the Commission about their entitlement to benefits. This is especially true considering that the Appellant's information came from a friend and was unverified and that the Appellant had not received any response from the Commission since filing his initial claim.

[39] As with the previous issue, the Tribunal does not find that the Appellant's stress or nervousness due to the measures taken against him by his employer constitutes an exceptional circumstance exempting him from the requirement that a claimant take reasonably prompt steps to determine whether they are entitled to Employment Insurance benefits and what their obligations are under the Act. (*Kaler, supra*)

[40] The Tribunal finds that the Appellant has not shown good cause for the delay in filing his renewal claim for benefits. The claim cannot be antedated. The appeal is dismissed on this issue.

[41] Lastly, as an argument common to both issues, the Appellant argued in his reconsideration request that he was an immigrant and that his first language was not French, which is why he allegedly did not cross-check the information his friend had given him (GD3-27). At the hearing, his representative repeated this argument in part to contextualize the facts of this case.

[42] However, the Appellant has lived in Canada since 1981 and has worked in Canada since 1984; he is an immigrant who is very well established in Canada. In addition, he speaks and

understands French well, even though it is not his mother tongue, and he has shown that he was able to use the different resources available to him to assert his rights. As a result, the Tribunal does not find that this argument constitutes an exceptional circumstance likely to exempt the Appellant from the requirements mentioned earlier.

CONCLUSION

[43] The appeal is dismissed on both issues.

Yoan Marier
Member, General Division – Employment Insurance Section

HEARD ON:	June 20, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. M., Appellant Alain Béliveau (counsel), Representative for the Appellant

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.

10 (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.

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.