



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. S. v. Canada Employment Insurance Commission*, 2018 SST 1007

Tribunal File Number: GE-18-709

BETWEEN:

**A. S.**

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: Bernadette Syverin

HEARD ON: September 6, 2018

DATE OF DECISION: September 14, 2018

## **DECISION**

[1] The appeal is dismissed. The Appellant's claim cannot be antedated because he failed to show that he had good cause for the delay in filing his initial claim for benefits. The reasons for this decision follow.

## **OVERVIEW**

[2] The Appellant lost his employment on August 18, 2017, but he did not file his claim for employment insurance benefits until December 6, 2017. The Canada Employment Insurance Commission (Commission) determined that the Appellant had not worked sufficient insurable hours during his qualifying period and could not establish a benefit period. The Appellant requested that the Commission antedate or back date his claim to August 19, 2017, as that is the date that he became unemployed. This request was denied as the Commission concluded that the Appellant's reasons for the delay did not constitute good cause pursuant to the *Employment Insurance Act* (Act). The Tribunal must decide whether the claim can be antedated.

## **PRELIMINARY MATTERS**

[3] Neither party to the appeal attended the teleconference hearing at the scheduled time, though they were duly notified. The Appellant received the Notice of Hearing on April 5, 2018, according to Canada Post's delivery receipt signed by the Appellant. As such, the Tribunal proceeded with the hearing in the absence of the Appellant under the authority of subsection 12 (1) of the *Social Security Tribunal Regulations* which allows the Tribunal to proceed once it is satisfied that all parties received the Notice of Hearing.

## **ISSUES**

[4] Issue 1: Did the Appellant have good cause for the delay in filing his initial claim for benefits?

[5] Issue 2: If the Appellant had good cause for the delay, would he have qualified to receive benefits on August 19, 2017?

## ANALYSIS

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

[7] The Act states that an initial claim for benefits made after the day when the Appellant was first qualified to make the claim shall be regarded as having been made on an earlier day if the Appellant shows that (a) 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, and (b) he qualified to receive benefits on the earlier date (Subsection 10 (4) of the Act).

### **Issue 1: Did the Appellant have good cause for the delay in filing his initial claim for benefits?**

[8] No. The claim cannot be antedated because the Appellant failed to show that he had good cause for the delay in filing his initial claim for benefits.

[9] To prove that they had good cause during the entire delay period, a claimant must show that they did what a reasonable and prudent person would have done in similar circumstances to satisfy themselves as to their rights and obligations under the Act. Furthermore, in order to establish good cause for a delay in applying for benefits, claimants must demonstrate that they have promptly taken steps to enquire as to their eligibility for benefits (*Persiiantsev*, 2010 FCA 101 *Kokavec*, 2008 FCA 307, *Paquette*, 2006 FCA 309).

[10] The Appellant submits that he did not file his claim right after having lost his employment in August 2017 because he was not aware of the employment insurance regime and did not know that he was entitled to benefits. In fact, he did not enquire about his entitlement to benefits until December 2017 when he consulted the Commission's website. The case law indicates that ignorance of the law and good faith might constitute good cause so long as the claimant was able to establish that he or she had acted as a reasonable and prudent person would have done in the same circumstances to satisfy themselves as to their rights and obligations under the Act (*Beaudin* 2005 FCA 123; *Shebib* 2003 FCA 88; *Rouleau A-4-95*; *Caron A-395-85*). The Tribunal recognizes that the Appellant was unfamiliar with the employment insurance regime; however the Appellant did not make efforts to educate himself about the regime more

than three months after he lost his employment. Therefore, the Tribunal determines that the Appellant has not demonstrated just cause for the delay in filing his application for benefits.

[11] The Appellant explained that he did not file his claim in August 2017 because he had been actively seeking new employment and he also enrolled in school as he wanted to change his career. The Appellant deserves much credit for the attitude he adopted and the steps he took to avoid the making of a claim. Nonetheless, the Tribunal determines that this does not constitute good cause for the delay in applying for benefits as good cause was not found in cases where a claimant had no initial intention to claim benefits because they were trying to find employment (*Howard* 2011 FCA 116; *Ouimet* 2010 FCA 83; *Shebib* 2003 FCA 88; *Smith* A-549-92).

[12] Unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits under the Act (*Canada (Attorney General) v. Carry*, 2005 FCA 367). There is no evidence to support that exceptional circumstances prevented the Appellant from making enquiries about his rights and obligations and/or applying for benefits throughout the three-month delay.

[13] The Tribunal concludes that the Appellant has not proven good cause throughout the entire period of the delay in filing his claim for benefits and accordingly is not entitled to have his claim antedated to August 19, 2017.

**Issue 2: If the Appellant had good cause for the delay, would he have qualified to receive benefits on August 19, 2017?**

[14] The law requires that the Appellant meet both factors in order to have his claim antedated (Subsection 10 (4) of the Act). Since the Appellant has not shown good cause for the entire duration of the delay, the Tribunal does not have to make a finding on whether the Appellant would have qualified for benefits on August 19, 2017.

**CONCLUSION**

[15] For all of the foregoing reasons, the Tribunal concludes that the Appellant failed to meet the onus placed upon him to demonstrate good cause for the entire period of the delay in filing his claim for benefits. Therefore his claim for benefits cannot be antedated to August 19, 2017.

[16] The appeal is dismissed.

Bernadette Syverin

Member, General Division - Employment Insurance Section

HEARD ON:	September 6, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	None

**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.