



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. F. c. Canada Employment Insurance Commission*, 2018 SST 1099

Tribunal File Number: GE-18-1155

BETWEEN:

J. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Heather Hamilton

HEARD ON: August 22, 2018

DATE OF DECISION: September 10, 2018

DECISION

[1] The appeal is allowed. The Appellant showed good cause throughout the entire period of delay for not filing her reports within the prescribed period of time.

OVERVIEW

[2] The Appellant applied for sickness benefits and established a benefit period on August 13, 2017 as she separated from her employment due to surgery. On her application for benefits she documented she had a date to return to her employer as of September 13, 2017. She was requesting sickness benefits during the time she was off work due to her surgery and provided medical documentation from her doctor. She acknowledged that she received employer benefits for the period of August 3, 2017 to August 14, 2017. She requested information from the Canada Employment Insurance Commission (Respondent) about her eligibility for sickness benefits and what she had to do. She was told her claim was approved and she had to do nothing.

[3] The Appellant submits that she received incorrect information that caused her to delay the filing of her claimant reports. She went back to work and after a month back at work she wondered why she had still not received any benefits. In late October and most of November she attempted to call Service Canada about 10 times; however she never got through and was always put on hold or the call would drop. In November she requested a day off work to personally visit a Service Canada office, and she secured a day off in December. On December 11, 2017 she went into a Service Canada office to ask about her claim and she was told to renew her claim, but that did not happen as the reports needed to be filed by September 16, 2017. The Appellant requested an antedate to August 13, 2017 so that her benefits can be paid from August 13, 2017 to September 13, 2017, when she was off work due to surgery.

[4] The Respondent denied the Appellant benefits initially and at reconsideration having determined that the Appellant has not demonstrated good cause for the delay in filing her reports and she did not act as a reasonable and prudent person in the same circumstances. She waited until December 11, 2017 to seek guidance on how to receive payments.

ISSUE

[5] Did the Appellant show good cause for the delay in filing the claimant reports?

ANALYSIS

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

[7] Subsection 10(5) of the Employment Insurance Act (Act) refers to other late claims and states that 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 the claim was made.

[8] The Federal Court of Appeal (FCA) has affirmed that the legal test for “good cause” is whether, through the entire period of the delay, the claimant did what a reasonable person would have done to satisfy himself or herself as to their rights and obligations under the EI Act (*Kaler v. Attorney General of Canada*, 2011 FCA 266; *Persiiantsev v. Attorney General of Canada*, 2010 FCA 101; *Albrecht v. Attorney General of Canada*, A-172-85).

Did the Appellant show good cause for her delay in filing the claimant reports?

[9] Yes. The Appellant has shown good cause throughout the entire period of delay in making her claim.

[10] In order to benefit from antedating under section 10(5) of the Act, the Appellant must prove the existence of good cause throughout the entire period of delay.

[11] The Appellant must show good cause for delaying in filing her reports throughout the entire period of delay from August 13, 2017 when she established a benefit period for sickness benefits to when she went into a Service Canada office on December 11, 2017 and was told to renew her application.

[12] Good cause is not the same as having a good reason, or a justification for the delay. In order to establish good cause the Appellant must show that she did what a reasonable and prudent person in the same circumstances would have done to satisfy herself as to her rights and obligations under the Act (*Canada (Attorney General) v. Mauchel*, 2012 FCA 202).

[13] The Appellant made an application for sickness benefits and requested 4 weeks of sickness benefits. She testified she spoke to a Service Canada Representative sometime at the end of July 2017 and was verbally told she would receive sickness benefits and she did not have

to do any reports. The Appellant further testified she was told there would be a time delay in receiving her benefits and so she did not question that she not receive them when she returned to work on September 13, 2017. She testified that she did receive the letter with her access code but thought that it was a standard letter that did not apply to her as she had already been told by a Representative that she was not required to do any reports.

[14] The Appellant stated that sometime in late October and November when she had not received her sickness benefits she attempted to contact Service Canada about 10 times; however, she was put on hold for a long time, and was disconnected after holding sometimes for periods of up to two hours, and other times the line was busy and she never got through. She explained that sometime in November she requested and scheduled a day off work from her employer to go into a Service Canada office on December 11, 2018 and ask about why she had not received her benefits.

[15] The Respondent argues the Appellant is responsible for enquiring about her rights and obligations and protecting them under the Act. She delayed because of a mistaken assumption and that she has not proven good cause for the delay in returning her reports by behaving as a reasonably prudent person would have behaved in the same circumstances; however, the Tribunal finds that the Respondent does not dispute the Appellant's statement that she was given this incorrect information. Considering the only evidence is the Appellant's testimony and the Respondent does not dispute her version of events, the Tribunal finds as fact that the Appellant was given this erroneous advice. The Tribunal finds the Respondent did not explain what the mistaken assumption on the part of the Appellant was. It is clear to the Tribunal that the Appellant was told by an authoritative Representative "that she did not have to file reports."

[16] The Appellant submits that she attempted to make a renewal claim as recommended by the Respondent, and she made a renewal application for sickness benefits on December 11, 2017 but she did receive her sickness benefits as the Reports needed to be filed by September 16, 2017.

[17] The Tribunal finds that the Appellant acted as reasonable person in her situation to inform herself of her rights and obligations under the EI Act by contacting the Respondent directly in December 2017, after making 10 attempts to call them with no success due to high volume and being disconnected. On December 11, 2017 she visited a Service Canada Centre in person and requested information about why she had not received her benefits when she had

been told at the end of July 2017 she did not have to file reports and there would be a delay in receiving her benefits.

[18] The Appellant's testimony was consistent with the information that she provided to the Respondent. Her husband also attended the hearing and collaborated with her testimony. The Tribunal found the Appellant's testimony to forthright, credible and in a direct and respectful manner. The Tribunal finds that the Appellant tried to contact the Respondent 10 times with no success and finally had to ask for a day off from the X to speak to another Representative in person. The Tribunal finds that the Appellant made attempts to determine her rights and obligations under the Act by speaking to a Representative at the end of July, making numerous phone calls and eventually taking a day off work to visit a Service Canada Centre.

[19] The Tribunal accepts the Appellant's explanation that she was told she did not have to do reports and accepts that she was told there would be a delay in receiving her benefits. The Tribunal finds that the Appellant acted as a reasonable person in the same situation when she accepted the authoritative advice from a Representative and it was natural for her to continue to accept it until such time an error is brought to her attention.

CONCLUSION

[20] The Tribunal finds the Appellant has proven good cause throughout the entire period of delay, as she demonstrated that she acted as a reasonable person in the same circumstances, under subsection 10(5) of the Act.

[21] The appeal is allowed.

Heather Hamilton

Member, General Division - Employment Insurance Section

HEARD ON:	August 22, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. F., 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.

(2) Except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks.

(3) Subject to a change or cancellation of a benefit period under this section, a benefit period shall not be established for the claimant if a prior benefit period has not ended.

(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.

(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.

(5.1) A claim for benefits referred to in section 23.1 with respect to a family member shall not be regarded as having been made on an earlier day under subsection (4) or (5) if

- (a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;
- (b) the beginning of the period referred to in subsection 23.1(4) has already been determined with respect to that family member and the claim would have the effect of moving the beginning of that period to an earlier date; or
- (c) the claim is made in any other circumstances set out in the regulations.

(5.2) A claim for benefits referred to in section 23.2 with respect to a critically ill child or children who are critically ill as a result of the same event must not be regarded as having been made on an earlier day under subsection (4) or (5) if

- (a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;
- (b) the beginning of the period referred to in subsection 23.2(3) or (4) has already been determined with respect to that child or those children and the claim would have the

effect of moving the beginning of that period to an earlier date; or

(c) the claim is made in any other circumstances set out in the regulations.

(6) Once a benefit period has been established for a claimant, the Commission may

(a) cancel the benefit period if it has ended and no benefits were paid or payable during the period; or

(b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant

(i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and

(ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.

(7) A cancelled benefit period or portion of a benefit period is deemed never to have begun.

(8) A benefit period ends when any of the following first occurs:

(a) no further benefits are payable to the claimant in their benefit period, including for the reason that benefits have been paid for the maximum number of weeks for which benefits may be paid under section 12;

(b) the benefit period would otherwise end under this section; or

(c) [Repealed, 2002, c. 9, s. 12]

(d) the claimant

(i) requests that their benefit period end,

(ii) makes a new initial claim for benefits under this Part or Part VII.1, and

(iii) qualifies, as an insured person, to receive benefits under this Part or qualifies, as a self-employed person within the meaning of subsection 152.01(1), to receive benefits under Part VII.1.

(9) Whether or not the benefit period has ended, a request under paragraph 8(d) 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 request was made.

(10) A claimant's benefit period is extended by the aggregate of any weeks during the benefit

period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

- (a) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction;
- (b) in receipt of earnings paid because of the complete severance of their relationship with their former employer;
- (c) in receipt of workers' compensation payments for an illness or injury; or
- (d) in receipt of payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the claimant, her unborn child or a child whom she was breast-feeding.

(11) A claimant's benefit period is extended by the aggregate of any weeks during an extension of a benefit period under subsection (10) for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because of a reason specified in that subsection.

(12) If the child or children referred to in subsection 23(1) are hospitalized during the period referred to in subsection 23(2), the benefit period is extended by the number of weeks during which the child or children are hospitalized.

(12.1) If, during the period referred to in subsection 23(2), the start date of a claimant's period of parental leave is deferred or a claimant is directed to return to duty from parental leave, in accordance with regulations made under the *National Defence Act*, the benefit period is extended by the number of weeks during which the claimant's parental leave is deferred or the claimant is directed to return to duty, as the case may be.

(13) If, during a claimant's benefit period,

- (a) regular benefits were not paid to the claimant,
- (b) benefits were paid to the claimant for more than one of the reasons mentioned in paragraphs 12(3)(a) to (e) and at least one of those benefits was paid for fewer than the applicable maximum number of weeks established for those reasons, and
- (c) the maximum total number of weeks established for those reasons is greater than 50,

the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.

(13.1) A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 17 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

(13.2) Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 17 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to

the claimant has been increased as a result of subsection 12(2.1).

(13.3) A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 37 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

(13.4) Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 37 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

(13.5) A claimant's benefit period is extended by 29 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.5).

(13.6) A claimant's benefit period is extended by 22 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.6).

(13.7) A benefit period that is deemed under subsection (13.2) or (13.4) not to have ended does not include the period that begins on the day after the day on which the benefit period ended and that ends on July 2, 2016.

(14) Subject to subsections (14.1) and (15), an extension under any of subsections (10) to (13.6) must not result in a benefit period of more than 104 weeks.

(14.1) The period that is excluded under subsection (13.7) is to be included in the calculation of the 104 weeks for the purposes of subsection (14).

(15) Unless the benefit period is also extended under any of subsections (10) to (12.1), an extension under subsection (13) must not result in a benefit period of more than the sum of two weeks and the total of the maximum number of weeks established under subsection 12(3) for each of the benefits paid to the claimant for one of the reasons mentioned in paragraphs 12(3)(a) to (e) during the claimant's benefit period before it was extended under subsection (13).

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.

(2) A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.

(3) A claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.

(4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

(5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.

(6) The Commission may require a claimant or group or class of claimants to be at a suitable

place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.

(7) For the purpose of proving that a claimant is available for work, the Commission may require the claimant to register for employment at an agency administered by the Government of Canada or a provincial government and to report to the agency at such reasonable times as the Commission or agency directs.

(8) For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.

(8.1) For the purpose of proving that the conditions of subsection 23.1(2) or 152.06(1) are met, the Commission may require the claimant to provide it with an additional certificate issued by a medical doctor.

(9) A claimant shall provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.

(10) The Commission may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.

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.