



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *V. P. v Canada Employment Insurance Commission*, 2018 SST 1416

Tribunal File Number: GE-18-1962

BETWEEN:

**V. P.**

Appellant/Claimant

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: Catherine Shaw

HEARD ON: October 2, 2018

DATE OF DECISION: October 10, 2018

## **DECISION**

[1] The appeal is dismissed. The claim cannot be antedated because the Claimant failed to demonstrate that she had good cause throughout the entire period of the delay in making her initial claim for benefits.

## **OVERVIEW**

[2] The Claimant made an initial claim for benefits in November 2017 and requested her claim be antedated to when she lost her employment in December 2016. The Canada Employment Insurance Commission (Commission) denied the Claimant's request to antedate because it decided she did not show good cause for the delay. The Claimant requested a reconsideration on the basis that she was engaged in a grievance of her dismissal with the employer, which was only finalized in October 2017. Further, she stated that she had become ill in September 2017 and was unable to work from that point. The Commission commenced a claim for sickness benefits effective from when the Claimant became unable to work in September 2017, but upheld its decision to deny her request to antedate her claim for regular benefits. The Claimant appeals to the Social Security Tribunal (Tribunal) to overturn the Commission's decision and allow her request to antedate her claim for regular benefits.

## **ISSUE**

[3] Is the Claimant entitled to have her claim for regular benefits antedated to December 18, 2016?

## **ANALYSIS**

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

[5] An initial claim for benefits may be antedated, or backdated, to an earlier date (subsection 10(4) of the *Employment Insurance Act* (Act)). To be eligible for an antedate, claimants must show that they had good cause for the delay in making their claim throughout the entire period of the delay. They must also show that they would have qualified for benefits on the earlier date.

[6] Good cause is not the same as having a good reason, or a justification for the delay. The test for good cause is whether, throughout the entire period of delay, a claimant can show that they did what a reasonable person in their situation would have done to satisfy themselves as to their rights and obligations under the Act (*Mauchel v. Canada (Attorney General)*, 2012 FCA 202; *Canada (Attorney General) v. Albrecht*, A-172- 85).

[7] The obligation and duty to promptly file a claim is seen as very demanding and strict. This is why the “good cause for delay” exception is cautiously applied (*Canada (Attorney General) v. Brace*, 2008 FCA 118).

[8] The burden of proof rests on a claimant to show that, barring exceptional circumstances, they took “reasonably prompt steps” to protect their benefits (*Canada (Attorney General) v. Carry*, 2005 FCA 367).

**Is the Claimant entitled to have her claim antedated?**

[9] The Claimant would have qualified for benefits on December 18, 2016, based on her insurable hours in the qualifying period applicable to that application date. However, she also has to meet the second part of the test for antedate: demonstrating that she had good cause throughout the entire period of the delay in making her initial claim.

[10] The Claimant requested her claim be antedated from November 3, 2017, the day she made an initial claim for benefits, to December 18, 2016, when she lost her employment. As such, the period of the delay is from December 18, 2016 to November 3, 2017.

[11] The Claimant was employed as an attendant at a retirement residence from November 16, 2015 to December 18, 2016. After being dismissed, she commenced a grievance with her union in the hopes that she would be reinstated in her position. Her grievance appeal was denied on October 6, 2017 and she received a letter from her former employer on October 30, 2017, which contained her employment details. She made an initial claim for benefits on November 3, 2017.

[12] The Claimant submitted medical documentation which stated that she became ill and unable to work as of September 28, 2017. The Commission accepted this evidence and commenced her claim for sickness benefits effective September 24, 2017.

[13] The Claimant submits the reason for the delay in making her initial claim for benefits was because she was engaged in a grievance with her union to appeal her dismissal. She further submits that she was waiting to receive the employment details from her former employer before she could submit her claim. She stated that she had hoped the grievance would be resolved within two months and would restore her back to her employment, but the proceedings took almost ten months.

[14] On October 6, 2017, the Claimant received confirmation that her grievance had been denied and she was not going to be reinstated in her position. She testified that her union representative advised her on that day to apply for employment insurance benefits; however, she stated that she wanted to wait to receive a letter with her employment details before making her claim for benefits. She received the letter on October 30, 2017 and made her initial claim on November 3, 2017.

[15] Absent exceptional circumstances, the Claimant was required to show good cause by taking reasonably prompt steps during this period to make her initial claim for benefits (*Canada (Attorney General) v. Somwaru*, 2010 FCA 336).

[16] The Claimant submits that her son had been shot on November 11, 2016, and had since been through several surgeries from November 2016 to June 2017. At the hearing, the Claimant stated that her son relied on her and her husband entirely during this period for meals and care. She stated that she was busy all day providing care for her son and his family, all of whom had moved in with the Claimant during this period.

[17] I sympathise with the Claimant's circumstances in having to provide full-time care to her son after his injury but I find there is insufficient evidence to support that the Claimant's role in providing meals and care for her son prevented her from contacting the Commission promptly after her employment ended, as she was capable of commencing a grievance process with her union at that time.

[18] I find the Claimant did not act as a reasonable person in her circumstances would have done to satisfy herself as to her rights and obligations. Even though she was engaged in a grievance appeal of her dismissal with her union and was hopeful that she would be reinstated in

her position, a reasonable person would have made a telephone call, or visited a Service Canada location, or looked online to inquire about her entitlement to benefits.

[19] After receiving the letter on October 6, 2017, which informed her that her grievance appeal was denied and she would not be returned to her employment, the Claimant then chose to wait until she received a confirmation of her employment details from her employer on October 30, 2017, before making her initial claim for benefits on November 3, 2017. The Claimant confirmed to the Commission and the Tribunal that she did not make any inquiries to the Commission regarding her entitlement to benefits or to verify that she needed the letter confirming her employment details to make her initial claim.

[20] It is the Claimant's burden to satisfy herself of her rights and obligations under the Act and by the Claimant's admission she took no positive steps to inquire with the Commission until over ten months after becoming unemployed, even after receiving advice from her union representative to make her claim. As a result, I must find that she has failed to prove she had good cause for the entire period of the delay and refuse her request to antedate her claim for employment insurance regular benefits.

## **CONCLUSION**

[21] The appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	October 2, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	V. P., Appellant/Claimant

**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.