



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. M. v Canada Employment Insurance Commission*, 2018 SST 1180

Tribunal File Number: GE-18-2794

BETWEEN:

**C. M.**

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: Linda Bell

HEARD ON: November 1, 2018

DATE OF DECISION: November 2, 2018

## **DECISION**

[1] The appeal is dismissed. The Appellant (Claimant) has not proven she had just cause for the entire period of delay in making her initial claim for Employment Insurance benefits.

## **OVERVIEW**

[2] The Claimant had been working as a domestic worker until her work permit expired on June 16, 2016. The Claimant did not work while she was waiting for her work permit to be renewed. She remained in Canada and gave birth to her first child on September X, 2016. The Claimant states that she did not apply for maternity or parental benefits in 2016, because she assumed she would not qualify for benefits while her work permit was expired. The Claimant was granted permanent residency status in Canada as of April 6, 2018, and gave birth to her second child on April X, 2018. She made an initial claim for maternity and parental benefits on April 18, 2018.

[3] The Canada Employment Insurance Commission (the Commission) informed the Claimant that she did not have enough hours of insurable employment to establish a benefit period as of April 15, 2018. The Claimant then requested that her benefit period be backdated (antedated) to **September X, 2016**, when she gave birth to her first child.

[4] The Commission determined that the Claimant did not show good cause for the delay in submitting her initial claim and denied her antedate request. Upon reconsideration, the Commission maintained their decision. The Claimant disputes the Commission's decision and argues that her claim should be antedated because she did not know that she may qualify for benefits back in 2016.

## **ISSUES**

[5] Has the Claimant proven she had good cause for the entire period she delayed in making her initial claim for benefits?

[6] Does the Claimant qualify for benefits on the earlier day?

## ANALYSIS

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

[8] The antedate of an initial claim is explained at subsection 10(4) of the *Employment Insurance Act (Act)*. The *Act* states that an initial claim shall be antedated if the following criteria are met: a) the Claimant proves 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) she qualifies to receive benefits on the earlier day.

[9] The Claimant needs to show that she acted as a reasonable and prudent person would have done in similar circumstances throughout the entire period of the delay. That is to say, the Claimant took reasonably prompt steps to determine her entitlement to benefits and to ensure her rights and obligations under the *Act (Canada (Attorney General) v. Kaler, 2011 FCA 266)*.

[10] I must also consider 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 (*Canada (Attorney General) v. Brace, 2008 FCA 118*).

[11] Before turning to the question of good cause for the delay, I must first determine the period of delay. Based on the interim Record of Employment (ROE) on file, the Claimant’s last day paid was listed as being on June 16, 2016. However, the actual ROE issued by the employer shows a last day paid as September 2, 2016. The Claimant submitted her initial claim on April 18, 2018, and testified before me that her actual last day worked was June 16, 2016, which I found to be credible. Therefore, the period of delay is from June 16, 2016, until April 18, 2018; which is a period of more than 1 year and 10 months.

[12] The Commission submits that the Claimant failed to show that she had good cause throughout the entire period of delay because she made an incorrect assumption that she would not be eligible for benefits. The Commission also submits that a reasonable person would have made enquiries directly with the Commission about the possibility of claiming benefits rather than relying on an assumption that they were not eligible, which I agree.

[13] The Commission submits that a prudent and reasonable person would have contacted them sooner. The Commission notes that the Claimant had the option of applying on-line, in person, or by mail, and could have enquired by calling the toll-free number or at any Service Canada Centre. There is no dispute that the Claimant failed to make any attempt to seek out what her rights and obligations were under the *Act*.

[14] The Claimant testified that she relied upon information she obtained from her friends who were of the same nationality and who were also in Canada working as nannies. She stated that she was afraid she would be deported and that she assumed, based on what she was told by her friends, that she would not qualify because her work permit had expired.

[15] I find the Claimant has not demonstrated that she acted as a reasonable or prudent person because she did not take reasonably prompt steps to determine her entitlement to benefits when she stopped working due to the birth of her first child in September 2016. She readily admits that she did not attempt to contact Service Canada or the Commission at that time. Therefore, it cannot be said that she did what a reasonable and prudent person would have done in the same circumstances because she delayed her enquiries for more than 1 year and 10 months, until April 2018.

[16] Good cause for the delay is not the same as having a good reason, or a justification for the delay. The Claimant readily admitted that she was afraid she would be deported so she made a personal choice to follow the advice of friends while she waited for her work permit or her permanent residency to be approved, instead of contacting Service Canada to find out what her rights and obligations were. Choosing to rely upon rumours, unverified information, and/or on unfounded and blind assumptions, does not constitute good cause (*Canada (Attorney General) v. Trinh*, 2010 FCA 335; *Canada (Attorney General) v. Beaudin*, A-341-04; *Shebib v. Canada (Attorney General)*, 2003 FCA 88).

[17] The Claimant has not proven that there were exceptional circumstances which prevented her from determining her rights and obligations under the *Act*. Nor has she proven that she acted like a reasonable and prudent person placed in the same circumstances, during the entire period of delay. Therefore, the Claimant has failed to prove she had good cause during the entire period

of delay from June 16, 2016, until April 18, 2018, in making her initial claim. Accordingly, the Claimant's benefit period cannot be antedated.

[18] I am sympathetic to the Claimant's personal circumstances; however, she has not shown that, on the balance of probabilities, she did what a reasonable person would have done to determine their rights and obligations under the *Act*. There is no requirement to assess whether the Claimant qualifies for benefits on the earlier day because she has not proven she had good cause for the entire period of delay.

**CONCLUSION**

[19] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	November 1, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. M., Appellant (Claimant) J. B., Assistant for the 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.