



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. I. v Canada Employment Insurance Commission*, 2019 SST 219

Tribunal File Number: GE-18-3377

BETWEEN:

E. I.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: December 11, 2018

DATE OF DECISION: January 14, 2019

DECISION

[1] The appeal is allowed. The Claimant has shown that he had good cause throughout the entire period of delay in making an initial claim for Employment (EI) benefits.

OVERVIEW

[2] The Appellant (Claimant) immigrated to Canada in March 2017. He had three successive employments before losing his last job on March 13, 2018. None of the employers gave him a Record of Employment (ROE). He did not apply for EI benefits. He had no knowledge of the EI program. He found out about the EI system from a fellow passenger on a bus. He visited a Service Canada office, was told about EI, applied for EI benefits on June 29, 2018, and was contacted a few days later by Service Canada and told to get his ROEs. He sought to have his claim antedated (backdated) to March 11, 2018. The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's request initially and upon reconsideration. The Claimant appeals to the Social Security Tribunal (Tribunal).

ISSUE

Does the Claimant qualify to have his claim antedated to March 11, 2018?

ANALYSIS

[3] Antedate, the backdating of initial claims, is provided for in subsection 10(4) of the *Employment Insurance Act* (Act). The Act states that a claim shall be antedated if (1) there was good cause for the delay in filing throughout the entire period of delay, and (2) the claimant shows that he or she qualified to receive benefits on the earlier date.

[4] To prove good cause for the delay in filing an initial claim for EI benefits, claimants must demonstrate that they did what a reasonable and prudent person would have done in the same circumstances to satisfy themselves as to their rights and obligations under the EI Act (*Kamgar v. Canada (Attorney General)*, 2013 FCA 157). The Claimant must show good cause for failing to apply for benefits, throughout the entire period of delay. In this case, the period of delay is from March 11, 2018, to June 24, 2018.

Did the Claimant have good cause for the delay in filing throughout the period?

[5] Yes, even though the Claimant did not take reasonably prompt steps to apply for EI benefits he has demonstrated exceptional circumstances to excuse his lack of action.

[6] The Courts have qualified the “reasonable person” test by noting that if a claimant did not act like a reasonable and prudent person, consideration should also be given to whether there were any exceptional circumstances (*Canada (AG) v. Caron*, A-395-85). The law is therefore clear that, barring exceptional circumstances, a prospective claimant in the respondent’s position is expected to “take reasonably prompt steps” to understand his obligations under the Act (*Canada (Attorney General) v. Somwaru*, 2010 FCA 336).

[7] The Claimant testified that he immigrated to Canada from Lebanon in March 2017. He got a book when he arrived at the airport. He had trouble holding the book to read. He did not know there were groups who took care of newcomers. Cab drivers told him about those organizations. He attended some information sessions where he learned about banking, renting homes, how to use the bus and attended workshops for starting a business. The Claimant testified that he had not learned about services from the federal government in the workshops. He is now connected with an association for new immigrants. The association holds workshops on finding jobs, help from employment specialists, and job interview practice.

[8] The Claimant testified that no one from his previous employers told him about how the deductions from his cheque for EI would be used. His co-workers did not tell him about EI. He testified that he still does not know about the three taxes deducted from his pay cheques. When looking at job ads he sees the salary but is not sure how much he would earn.

[9] The Claimant testified he was on the bus one day after his last employment ended when a woman sat next to him asked him if he was working. He replied “no.” She then asked if he “was on EI?” He asked “what was that?” She replied that “if he was eligible he could have financial assistance from a refund of his tax.” The woman told him he had to go to “Insurance Canada” to apply to see if he was eligible. Shortly thereafter he visited a Service Canada office and told his story. He had not been working since March. He got a call a few days later. The agent explained the program to him. The Claimant testified that he was not given an ROE when

he left any of the three employments that he held. The Service Canada agent told the Claimant to get his ROEs. He contacted his employers for the ROEs. After the hearing the Claimant submitted a copy of an email to his second employer dated June 21, 2018, in which he requested an ROE, and a copy of a text dated July 9 to his first employer in which he requested an ROE. On June 26, 2018, the Claimant's second employer sent the ROE to the Claimant as an attachment to an email. The Claimant's initial claim for EI was received on June 29, 2018. On July 11 the Claimant's first employer advised the Claimant that the paper was at the store ready for pick up. The Claimant testified that Service Canada had to ask the third employer for the ROE. The Claimant testified the ROE from the third employer was issued on August 23, 2018, because the two prior ROEs from that employer were incorrect.

[10] The Claimant indicated in his request for reconsideration that at the time he was not aware that the government had these types of programs. At the time there was a language barrier. The Claimant testified that initially he was a "very beginner" with English and had difficulty listening to and understanding Canadians who spoke fast, used slang or had an accent.

[11] The Commission submitted that the Claimant did not act like a 'reasonable person' in his situation would have done to verify his rights and obligations under the Act. The Claimant finished work in March 12, 2018 and did not file his claim for benefits until June 29, 2018. He indicated that he did not know this program existed because he was new to Canada. He stated that after being off work for three months he was struggling financially and decided to check with Service Canada at the end of June. The Commission submitted that the Claimant indicated that there was nothing that prevented him from filing his claim on an earlier date.

[12] When a claimant has failed to file his claim in a timely way and his ignorance of the law is ultimately the reason for his failure, he ought to be able to satisfy the requirement of having good cause, when he is able to show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act. This means that each case must be judged on its own facts and to this extent no clear and easily applicable principle exists; a partially subjective appreciation of the circumstances is involved which excludes the possibility of any exclusively objective test (*Attorney General of Canada v. Albrecht*, A-172-85).

[13] The Commission recorded the Claimant as having two vague conversations about EI: one concerning the hours required and another when someone else told him he should apply and see how it goes. The Claimant was unable to say when these conversations took place. He told the Commission that the people he lived with did not tell him about EI. The Commission concluded that he decided to apply for EI three months after he stopped working, when the Claimant was struggling financially. The testimony the Claimant provided was that he found out about the EI and how to apply for EI from a stranger on the bus. In his testimony, the Claimant did not reference financial difficulties as the reason for his application for EI. He submitted that the only thing stopping him from apply for EI was his lack of knowledge. The Tribunal prefers the evidence of the Claimant given directly to the Tribunal regarding when and how he became aware of EI and the steps he took to enquire about EI because the evidence was detailed, and he was forthright and consistent in his statements to the Tribunal. The evidence in the file of the conversations held with the Claimant and the Commission is not conclusive regarding when and with whom the Claimant had conversations about EI.

[14] The Tribunal finds that the Claimant has shown good cause for the entire period of the delay for failing to take reasonably prompt steps due to exceptional circumstances. The Claimant recently immigrated to Canada, was a new entrant to the Canadian employment system and was hindered in his ability to seek information about EI because none of his former employers had issued him an ROE. The Tribunal notes that an ROE provides important information concerning when and how to apply for EI. The requirement that the Claimant take prompt steps to “satisfy himself as to his obligations under the Act” can apply once he becomes aware of some circumstance to which the Act is addressed. The Tribunal accepts that the Claimant did not receive an ROE from any of his employers as demonstrated by his evidence that it was a Service Canada agent who told him to obtain the ROEs, the text and email he provided showing when he requested the ROEs from the first two employers and the date on which the third employer’s ROE was finalized. The Tribunal accepts that the Claimant would not have known to contact Service Canada when he stopped working because he did not receive an ROE from any of his employers. The Tribunal accepts that the Claimant’s co-workers and friends did not discuss the EI system with him. When he had knowledge of the EI system and was told that he should apply, he visited a Service Canada Centre and asked about benefits. When instructed he went about getting the necessary ROE’s. As a result, the Tribunal finds that

the Claimant has shown good cause for delaying his claim and while he may not have taken immediate steps to inform himself of his rights and obligations under the Act, he took immediate steps when he became aware of the existence of the employment insurance program.

Accordingly, the Tribunal finds that the Claimant's circumstances were exceptional and that he therefore acted as a reasonable person would have done in his situation.

Would the Claimant have qualified to receive benefits on March 11, 2018?

[15] The Commission has not provided a submission in this regard. The Claimant has requested that his claim for EI benefits be antedated to March 11, 2018. The Tribunal notes that in a Supplemental Record of Claim, dated October 26, 2018, a Service Canada agent recorded "Explained to the Claimant that he has been paid his 16 week entitlement. If he had filed in March when he finished work he would have a longer entitlement." Given the absence of evidence on this point and the agents' statement to the Claimant the Tribunal finds that the Claimant was qualified to receive benefits on the earlier date of March 11, 2018.

CONCLUSION

[16] The appeal is allowed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	December 11, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. I., Appellant