



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *H. S. v Canada Employment Insurance Commission*, 2019 SST 230

Tribunal File Number: GE-18-3624

BETWEEN:

**H. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

---

DECISION BY: John Noonan

HEARD ON: January 15, 2019

DATE OF DECISION: January 29, 2019

## **OVERVIEW**

[1] The Appellant, H. S., was upon reconsideration by the Commission, notified that his claim for Employment Insurance benefits cannot start on March 18, 2018 because he did not prove that between March 18, 2018 and June 8, 2018 he had good cause to apply late for benefits. He did not show good cause throughout the entire period of the delay in filing his application therefore the Commission denied his antedate request pursuant to subsection 10 (4) of the Act. The Appellant asserts that he delayed filing his claim because he did not know he had to do it by himself. He stated the employer told him everything is done on-line but after twice contacting the accountant, he received his record of employment by mail, which was issued late. The Appellant stated it is for this reason he requests that he be provided with employment insurance benefits from the date he was dismissed. (Page GD3-17) The Tribunal must decide if the Appellant should be denied an antedate as per subsection 10(4) of the Employment Insurance Act (the Act).

## **DECISION**

[2] The appeal is allowed.

## **ISSUES**

[3] Issue # 1: Did the Appellant qualify on the earlier day?

Issue #2: If so, was there good cause for the delay throughout the entire period?

## **ANALYSIS**

[4] The relevant legislative provisions are reproduced at GD4.

[5] Subsection 10(4) of the Act allows a claim for benefits to be considered to have been made on an earlier day if the Appellant shows he qualified for benefits on the earlier day and that he had good cause for the delay, throughout the entire period of delay.

[6] The correct legal test for good cause is whether the Appellant acted as a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act. **Canada (AG) v. Kaler, 2011 FCA 266**

[7] The onus / burden is on the Appellant to show good cause for the delay throughout the entire period. **CUB 18315** The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” the events occurred as described.

[8] Good cause is not defined in the legislation. It can be said to exist where the claimant acted as a reasonable person in the same situation would have acted to ensure compliance with his rights and obligations under the Act. **Paquette v. Canada (AG), 2006 FCA 309**

**Issue #1: Did the Appellant qualify on the earlier day?**

[9] Yes.

[10] Evidence on the file shows that the Appellant met all qualifying conditions upon his leaving his employment on March 20, 2018.

**Issue #2: If so, was there good cause for the delay throughout the entire period?**

[11] Yes.

[12] For the period of March 18, 2018 through to June 13, 2018 he failed to submit his application due to having received erroneous information from the employer while being in a legal dispute with the same employer.

[13] At his hearing, the Appellant testified that he was unfamiliar with the “system”. He had initially been told, by the head of HR, the son of the employer with whom the Appellant was having the legal dispute, that everything relating to his EI was being done electronically, a

blatant misinformation. The only thing the employer could do was to issue an ROE electronically. The actual ROE was not sent until June 13, 2018.

[14] The other misinformation seems to have been given in an effort to stymie the Appellant's ability to continue to pay his bills thus expediting the legal case in the employer's favour. This legal case revolved around the employer owing \$128,075.00 to the Appellant. This according to the Appellant, represented his life's savings and the prospect of losing it all caused great stress and recouping these monies occupied all his time during the period in question here.

[15] Initially he had no reason to distrust the information he was receiving from the HR department as they were considered by the staff to be the ones who knew the "system". CUBs 12698, 11103, 10025 and 36384A

[16] He further testified that once he had the correct information and his legal problem was settled, he was able to concentrate and apply for benefits correctly, albeit late.

[17] The Appellant, at his hearing, was observed to have some difficulty with English as it was obviously not his native language. CUB 10494

[18] I find that the Appellant, in this case, did act "as a reasonable person in the same situation would have acted to ensure compliance with his rights and obligations under the Act".

[19] The onus is totally on the Appellant to submit the application for benefits in a timely manner. There is no provision in the legislation that would allow for the payment of benefits when no claim for such was made in the proper manner as described in the Act and Regulations.

[20] However, in this case, I find that the Appellant has shown evidence of good cause for the delay in submitting his application for benefits throughout the entire period.

**CONCLUSION**

[21] Having given careful consideration to all the circumstances, I find that the Appellant has, through his submissions and testimony, shown good cause throughout the entire period of delay as the onus is on him to do so therefore in the interest of natural justice, the appeal is allowed and the antedate request granted.

John Noonan

Member, General Division - Employment Insurance Section

HEARD ON:	January 15, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	H. S., Appellant