



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. C. v Canada Employment Insurance Commission*, 2019 SST 246

Tribunal File Number: GE-18-3570

BETWEEN:

J. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

HEARD ON: February 1, 2019

DATE OF DECISION: February 12, 2019

DECISION

[1] The appeal is allowed. The Appellant has shown good cause for the delay in making his claims for benefits.

OVERVIEW

[2] The Appellant left his employment as a teacher when employer terminated his employment. The Appellant started completing bi-weekly but stopped because he had been dismissed from his employment and was told that he may not be entitled to benefits and if so, would have to pay back money he had received. The Ontario College of Teachers investigated the Appellant's dismissal from his employment and found no culpability or professional misconduct. The Appellant was made aware of this finding on November 9, 2017, and made a request to antedate his claim for benefits on July 24, 2018. The Respondent determined that the Appellant did not have good cause throughout the period of delay in claiming benefits.

PRELIMINARY MATTERS

[3] The Tribunal must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit (paragraph 3(1)(a), *Social Security Tribunal Regulations*). If the Tribunal grants an adjournment at the request of a party, the Tribunal must not grant the party a subsequent adjournment unless the party establishes that it is justified by exceptional circumstances (subsection 11(2), *Social Security Tribunal Regulations*).

[4] The hearing was scheduled for January 2, 2019. The Appellant requested that the hearing be adjourned to allow his parents, who were away from December 9, 2018 to December 26, 2018, to help him prepare for the hearing, either by acting as representative(s) or providing moral support. The Appellant also indicated that he had had difficulty getting documents in support of his appeal. In the interests of natural justice, the Tribunal granted the adjournment under section 11 of the *Social Security Tribunal Regulations*, setting a new hearing date for January 15, 2019.

[5] On January 7, 2019, the Appellant requested that the hearing scheduled for January 15, 2019, be adjourned until at least March 2019, to allow him to properly prepare for the hearing. He indicated that it had been difficult to get all of his medical records and proper records of

employment. The Tribunal is not satisfied that the Appellant has established that his adjournment request is justified by exceptional circumstances.

[6] The Appellant filed his appeal on November 27, 2018. With the adjournment that was granted for a period of just under two weeks, the Appellant had seven weeks to gather documents that he needed to support his appeal of the Respondent's reconsideration decision that he had not shown good cause for the delay in completing his bi-weekly claims for benefits. The Appellant requested a further adjournment of more than six weeks, but he did not detail what efforts he has made to obtain the documents, what the difficulty was in obtaining them, and how the documents relate to the issue of good cause for the delay in completing his bi-weekly claims for benefits.

[7] For the reasons noted above, the Tribunal denied the Appellant's request for an adjournment to March 2019.

[8] At the hearing on January 15, 2019, the Appellant's representative presented additional oral arguments for adjourning the hearing, again citing the need to obtain documents. Although the Tribunal did not find that the documents related to the termination of the Appellant's employment were relevant to the issue to be decided, it found that the medical documents, which the Appellant's representative had in his possession were relevant. However, due to time, the hearing was adjourned.

ISSUE

[9] Has the Appellant shown good cause for the entire period for the delay in making his claims for benefits?

ANALYSIS

Issue: Has the Appellant shown good cause for the entire period for the delay in making his claims for benefits?

[10] The Tribunal finds that the Appellant had good cause for the delay for the entire period of the delay in making his claims for benefits.

[11] A claim for benefits for a week of unemployment in a benefit period must be made within the prescribed time (subsection 50(4), *Employment Insurance Act*). A claimant must make a claim for benefits for a week of unemployment must be made within three weeks after the week for which benefits are claimed (subsection 26(1), *Employment Insurance Regulations*). For a claim for benefits to be regarded as having been made on an earlier day, the claimant must show that there was good cause for the delay throughout the period from the earlier day to the day when the claim was made (subsection 10(5), *Employment Insurance Act*). A claimant who does not 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 (subsection 50(1), *Employment Insurance Act*).

[12] The claimant has burden of proof for demonstrating good cause (*Canada (AG) v. Persiiantsev*, 2010 FCA 101; *Paquette v. Canada (AG)*, 2006 FCA 309). A claimant shows good cause by proving that they have done what a reasonable and prudent person would have done in the same circumstances to satisfy themselves of their rights and obligations under the Act (*Mauchel v. Canada (AG)*, 2012 FCA 202; *Bradford v. Canada (AG)*, 2012 FCA 120; *Canada (AG) v. Kaler*, 2011 FCA 266).

[13] For clarity, on February 10, 2016, the Appellant filed a bi-weekly claim for the reporting period January 24, 2016 to February 6, 2016. On March 6, 2016, the Appellant attempted to file a bi-weekly claim for the reporting period February 7, 2016 to February 20, 2016, but he was prompted to call the Respondent. Because the Appellant did not call, this bi-weekly claim was cancelled.

[14] The Appellant was required by the *Employment Insurance Regulations* to make a claim for the week of February 7, 2016 to February 13, 2016, within three weeks after the week for which he was making a claim, which is by March 5, 2016. The Tribunal therefore finds that the period in question for which the Appellant must demonstrate good cause is from March 5, 2016, which is the last day on which he could have made a claim for the week ending February 13, 2016, and July 24, 2018, when the Appellant asked that his claim be antedated.

[15] In his request to the Respondent to have his claims for benefits antedated, the Appellant told the Respondent that he had stopped making his claims because he was told and came to

understand that he may be ineligible for benefits because he had been terminated from his employment. He stated that he also learned that he might have to repay money he had received. The Appellant told the Respondent that there was nothing physically preventing him from inquiring about his rights and responsibilities, confirming that he did not contact the Respondent to enquire about his continued eligibility for benefits.

[16] The Appellant did not participate in the hearing, although he was the one who filed his notice of appeal and requested the first adjournment of the hearing. At the hearing, his father, who acted as his representative and also testified on his son's behalf, referred to a mental breakdown that his son had, which led to the termination of his employment. He stated that after having been incorrectly diagnosed with bipolar disorder, the Appellant was properly diagnosed with an adjustment disorder that dated back to 2015. The Appellant's father said that the Appellant was subject to ongoing stressors, including the termination, having the termination reported to the Ontario College of Teachers, relationship problems, and an ongoing process resulting from the Ontario College of Teachers having referred the Appellant's case to the Fitness to Practice Committee, all on top of his medical condition.

[17] The Appellant's father submitted a number of medical documents specific to his son's medical condition in support of his appeal as follows:

- A report from a hospital concerning the Appellant's attendance in the emergency department on October 2, 2015, complaining of palpitations and chest pain, to which the Appellant's father referred at the hearing and in his submissions;
- A letter from a clinical psychologist dated June 27, 2016, diagnosing the Appellant with an adjustment disorder;
- A letter from a psychiatrist dated December 8, 2016, in which the psychiatrist defends having diagnosed the Appellant on March 30, 2016 with bipolar disorder;
- The conclusion of the College of Physicians and Surgeons of Ontario and disposition dated June 12, 2017, concerning the psychiatrist's bipolar disorder diagnosis;

- A letter dated January 14, 2019, from a medical doctor who states that the Appellant has been unable to work from December 2015 to the present due to mental health issues. The letter lists six dates on which the doctor assessed the Appellant between February 11, 2016 and December 18, 2018.

[18] On February 4, 2019, the Respondent made supplementary representations after having reviewed the evidence submitted by the Appellant's father. The Respondent submitted that after having reviewed the additional information and supporting evidence, it concludes that the Appellant had good cause for not completing his reports for the period in question. The Tribunal agrees with the Respondent for reasons that follow.

[19] The Tribunal accepts from the medical evidence that the Appellant suffers from an adjustment disorder that is exacerbated by stress. One of the generic medical documents that the Appellant's father submitted is what appears to be an information sheet from the Mayo Clinic titled Mental Health and Adjustment Disorder. The documents notes that signs and symptoms depend on the type of adjustment disorder and can vary from person to person, but states that a person with such a disorder experiences more stress than would normally be expected in response to a stressful event, which causes significant problems in the person's life. One of the symptoms identified is avoiding important things such as going to work or paying bills. The document says that although symptoms start within three months of a stressful event and last no longer than six months after the end of the stressful event, persistent or chronic adjustment disorders can continue for more than six months, especially if the stressor is ongoing, such as unemployment.

[20] The Tribunal is persuaded by the description of the circumstances the Appellant faced, including his firing, his misdiagnosis, the investigation by the Ontario College of Teachers into the termination of the Appellant's employment, the ongoing process before the Fitness to Practice Committee, and the relationship issues the Appellant had with his fiancée, in coming to the conclusion that the Appellant continues to face stress. The Tribunal finds that this stress, combined with the Appellant's adjustment disorder are sufficient to demonstrate that the Appellant's medical condition affected the Appellant's ability to file his bi-weekly claims, and that he has good cause for the delay from March 5, 2016 to July 24, 2018, in making his claim.

[21] The Appellant's father submitted a number of Canadian Umpire Benefit (CUB) decisions that support his position. While the Tribunal is not bound by CUB decisions, the Tribunal is persuaded that while ignorance of the law is not generally accepted as a reason to antedate a claim, there may be additional circumstances that lead to a finding that good cause exists for the delay.

[22] The Appellant told the Respondent that he did not contact the Respondent to find out about his eligibility for benefits after his union representative told him that he may not be eligible. The Appellant's father submitted a letter from a lawyer in which the lawyer refers to a conversation he had with the Appellant's father about the Appellant's situation on July 20, 2018. The lawyer suggested that the Appellant ask the Respondent to antedate his claim for benefits. The Appellant made that request to antedate his claim on July 24, 2018.

[23] The Tribunal finds that in the unique circumstances of the Appellant's ignorance of the law combined with his medical condition, which affected his ability to act as a reasonable and prudent person, it was not until his father got advice from a lawyer that he understood that he could request to have his claims for benefits antedated, and that he did so promptly thereafter. The Tribunal therefore finds that the Appellant has demonstrated that he had good cause for the delay from March 5, 2016 to July 24, 2018, in filing his claims for benefits.

CONCLUSION

[24] The appeal is allowed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	February 1, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. C., Representative for the Appellant