



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. B. v Canada Employment Insurance Commission*, 2019 SST 1273

Tribunal File Number: GE-18-1995

BETWEEN:

S. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Takis Pappas

HEARD ON: October 1, 2018

DATE OF DECISION: February 8, 2019

DECISION

[1] The appeal is allowed. The Appellant showed that she had good cause throughout the entire period of the delay in making her claim for benefits and had good cause for her delay in submitting her biweekly claimant reports.

OVERVIEW

[2] The Appellant then an initial claim for employment insurance benefits on December 6, 2017, she had enough hours to qualify for benefits and a claim was made effective on December 3, 2017.¹ The Appellant submitted a Record of Employment to the Respondent on February 27, 2018 that was issued on February 7, 2018² and later attempted to file her electronic client reports on March 18, 2018.³ After attempting to file her reports she filed a renewal application on March 18, 2018.⁴ The Appellant requested that her application for benefits commence on the week of October 31, 2017.⁵

[3] The Respondent concluded that the Appellant failed to show good cause throughout the entire period of the delay in filing her claim for employment insurance benefits and she did not file her reports in a timely manner because in accordance with subsection 26(1) of the *Employment Insurance Regulations* (the Regulations), the said report should have been returned to the Respondent no later than January 3, 2018. The Appellant requested a reconsideration. In the reconsideration decision, the Respondent maintained its initial decision. The Appellant appealed this decision to the Social Security Tribunal.

ISSUES

[4] Issue #1: Did the Appellant show she had good cause throughout the entire period of the delay in making her initial claim for benefits?

[5] Issue #2: If so, would she have qualified to receive benefits on the earlier date?

¹ (GD3-3 to GD3-14)

² (GD3-15 to GD3-16)

³ (GD3-17 to GD3-21)

⁴ (GD3-22 to GD3-32)

⁵ (GD3-33)

[6] Issue #3: Did the Appellant show she had good cause for his delay in submitting her reports?

ANALYSIS

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

[8] 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 he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act.⁶

[9] 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.⁷

[10] Unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits.⁸

[11] For her initial claim for benefits to be antedated to October 31, 2017, the burden of proof rests with the Appellant to prove that she:

- a) Qualified for benefits as of October 31, 2017; and
- b) Had good cause, throughout the period, for the delay in making the initial claim for benefits.

Issue #1: Did the Appellant show she had good cause throughout the entire period of the

⁶ (Mauchel v. Canada (Attorney General), 2012 FCA 202; Canada (Attorney General) v. Albrecht, A-172- 85)

⁷ (Canada (Attorney General) v. Brace, 2008 FCA 118)

⁸ (Canada (Attorney General) v. Kaler, 2010 FCA 336)

delay in making her initial claim for benefits?

[12] Yes. The Appellant did have good cause throughout the entire period of the delay in making her initial claim for benefits.

[13] The Respondent submitted that the Appellant did not act like a reasonable person in her situation would have done to verify her rights and obligations under the Act. Although the Appellant mentions her ongoing issues with attention, concentration and meeting deadlines due to her underlying medical problem, she specifically advised the Respondent that her reason for not applying for employment insurance until December 6, 2017 was due to not having her Record of Employment.⁹ A reasonable person in the Appellant's situation would have contacted the Respondent after receiving her initial, incorrect Record of Employment to inquire about what she could do to protect her claim for benefits. The Appellant did not attempt to contact the Respondent until March 22, 2018, however she mentioned a previous attempt which she hung up due to the wait time and it being busy.

[14] The Respondent also submitted that a reasonable person in the Appellant's situation, who is concerned with protecting their claim for benefits, would have contacted the Respondent to inquire about their circumstances and if it would be possible to file a claim for benefits without their Record of Employment. Furthermore, the Appellant's doesn't mention making contact with the Respondent prior to receiving the copy of her Record of Employment in February 2018 and prior to this she had not sought out clarification if she could apply without her Record of Employment, as she was under the impression that it was needed.

[15] At the hearing, the Appellant testified that after she lost her employment she was overwhelmed. Because she had some savings it never occurred to her to call. In her "brain" she was doing the right thing and she did not have any questions for Service Canada. She thought she was correct in her assumptions. When the Respondent called her, she was outside crying but wanted to go on with the interrogation. It was a very traumatic experience.

⁹ (GD3-45)

[16] The Appellant's Representative submitted that the Appellant had attention and concentration issues because of her underlying medical problems. These were exceptional circumstances.

[17] After considering all the evidence from both parties, I find that the Appellant had good cause for the entire period of delay.

[18] I accept the clear, cogent and direct evidence of the Appellant's version of events that explain why she did not file for the claim on October 31, 2017.

[19] While the Respondent acknowledged that there have been issues with the Appellant's ongoing issues with attention, concentration and meeting deadlines due to her underlying medical problems, they did not explain why they did not consider this evidence.

[20] I accepted the medical evidence in GD2-4 and place considerable weight in the Doctor's submission that the Appellant is having ongoing issues with attention, concentration and meeting deadlines due her underlying medical problem. I find that the Appellant's inability to clearly communicate with the Respondent because of her issues with attention, concentration and meeting deadlines due to her underlying medical problems, played a big role in that she delayed in filing her claim in a timely manner. I find that because of her medical condition she could not take the actions a reasonable person would take under the same circumstances to inform herself of her obligations.

Issue #2: Was the Appellant qualified to receive benefits on the earlier date?

[21] The Respondent did not make any submissions as to whether the Appellant qualifies for benefits on the earlier date. Given the absence of any evidence that the Appellant would not qualify on the earlier date, I find that the Appellant qualifies for benefits on October 31, 2017.

Issue #3: Did the Appellant show she had good cause for her delay in submitting the reports?

[22] In order to receive employment insurance benefits for a week of unemployment, a claimant must make a claim for benefits (subsection 49(1) of the Employment Insurance Act In practice, claimants make these ongoing claims for benefits by completing biweekly claimant

reports, usually by phone or internet. Claimants must make these reports within three weeks from the date of the report, or else the report is considered late.¹⁰

[23] The Commission can accept late biweekly claimant reports, but the claimant must prove that they had good cause for the delay in submitting the reports.¹¹ Good cause means that the claimant acted as a reasonable person in their situation would have done to satisfy themselves of their rights and obligations under the Act. Claimants must take reasonably prompt steps to understand their entitlement and the requirement to make timely claims is “demanding and strict.” Ignorance of the law, even if paired with good faith, is not enough to amount to good cause.¹²

[24] The Respondent submitted that a reasonable person in this situation would have attempted to contact the Respondent and continue to do so until they were successful. In the event that the Appellant was unable to connect with the Respondent by telephone, it would have been reasonable for her to come into a Service Canada Centre to inquire about her rights and responsibilities regarding her client reports, especially after receiving the letter with her access code.

[25] I find that the Appellant’s issues with attention, concentration and meeting deadlines due to her underlying medical problems played a big role in that she delayed to file her reports in a timely manner. I find that because of her medical condition she could not take the actions a reasonable person would take under the same circumstances to inform herself of her obligations.

[26] As a result, I find that the Appellant proved that she had good cause for her delay in submitting her biweekly claimant reports.

¹⁰ (subsection 50(4) of the Act and subsection 26(1) of the Regulations)

¹¹ (subsection 10(5) of the EI Act)

¹² (Canada (Attorney General) v. Kaler, 2011 FCA 266)

CONCLUSION

[27] The appeal is allowed.

Takis Pappas

Member, General Division - Employment Insurance Section

| | |
|-----------------------|---|
| HEARD ON: | October 1, 2018 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | S. B., Appellant Rachell Marie Abou-Hamad, Representative for the Appellant |