



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. L. v Canada Employment Insurance Commission*, 2019 SST 866

Tribunal File Number: GE-18-3726

BETWEEN:

W. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: February 7, 2019

DATE OF DECISION: March 8, 2019

DECISION

[1] I am allowing W. L.'s appeal because he has shown good cause for his delay in applying for benefits for the entire period between April 12, 2015, and August 25, 2015.

OVERVIEW

[2] The Claimant is W. L. He stopped working on April 9, 2015, but he did not apply for regular benefits under the *Employment Insurance Act* until August 25, 2015. The Claimant asked the Canada Employment Insurance Commission (Commission) to consider his application as an application for sickness benefits, and as having been made on April 12, 2015. The Commission refused to consider his application as having been made earlier because they determined that the Claimant did not have good cause for not applying earlier.

[3] The issue before me is the Claimant's antedate request, not his request to have his claim converted to sickness benefits.¹

[4] I must decide if the Claimant's initial claim for benefits can be considered as having been made in April 2015.

PRELIMINARY MATTERS

[5] Neither party attended the hearing.

[6] I was satisfied that the Claimant received notice of the hearing because it was sent to him by priority post and the file shows that the Claimant acknowledged receipt of the notice of hearing by his electronic signature. I was satisfied that the Commission received the notice of hearing by electronic means. Despite the Claimant contacting the Tribunal a number of times since the hearing, he has not asked for the hearing to be rescheduled.

¹ I only have jurisdiction to hear appeals of the Commission's decisions that are made under s 112 of the Act. The decision made under s 112 of the Act is at page GD3-76, and shows that the Commission's decision was on the Claimant's antedate request.

[7] Because both parties received notice of the hearing and chose not to attend the hearing or to request an adjournment, I proceeded with the hearing pursuant to section 12 of the *Social Security Tribunal Regulations*.

ISSUES

[8] Did the Claimant qualify for benefits on April 12, 2015?

[9] Has the Claimant shown good cause for the delay in applying for benefits?

ANALYSIS

[10] An initial claim for benefits can be considered to have been made on an earlier day (backdated), if the claimant proves, on a balance of probabilities, that:

- a) they qualified to receive the benefit on the earlier day, and
- b) there was good cause for the delay starting on the earlier day and ending when the initial claim (application for benefits) was actually made.²

[11] This exception must be cautiously applied.³ To prove good cause, a claimant must prove, on a balance of probabilities, that they acted as a reasonable and prudent person would have done to satisfy themselves as to their rights and obligations under the Act. The duty of care is both demanding and strict⁴.

Did the Claimant qualify for benefits on April 12, 2015?

[12] The Commission stated that the Claimant would have qualified for benefits on April 12, 2015, if he had applied.⁵ The Claimant has not disputed this. As such, I find that the Claimant qualified to receive benefits on April 12, 2015.

Has the Claimant shown good cause for the delay?

² S 10(4) of the Act

³ *Rodger v. Canada (Attorney General)*, A-562-12

⁴ *Canada (Attorney General) v. Albrecht*, [1985] 1 F.C. 710

⁵ See page GD7-1.

[13] Yes. I find that the Claimant has proven that there was good cause for the delay in applying for benefits.

[14] Section 10(4) of the Act states that the Claimant must show good cause for the delay in applying for benefits, starting on the earlier day, which is April 12, 2015, and ending when he made his initial claim, which was August 25, 2015. The Commission agrees that he submitted his application on August 25, 2015.⁶

[15] Therefore, the Claimant must show good cause for the delay in applying for benefits from April 12, 2015, to August 25, 2015.

[16] The Commission argued that the Claimant must show good cause for the period from April 12, 2015, to April 2017. I find that the Commission did not properly apply section 10(4) of the Act. As stated above, based on section 10(4) of the Act, I find that the period for which the Claimant must show good cause is from April 12, 2015, to August 25, 2015, not April 2017.

[17] The Commission argued that the Claimant made his antedate request over three years late. I find that this is incorrect because the Commission's notes at page GD 3-22 prove that the Claimant made an antedate request in September 2015. The issue is not when he made his antedate request, but whether he has shown good cause for the delay in applying for benefits between April 12, 2015, and August 25, 2015.

[18] The Claimant argued that there was good cause for the delay because he did not think about employment insurance benefits because of his mental health.

[19] I find that the medical evidence from pages GD3-31 to GD3-72 proves that he was in the hospital because of mental illness between June 29, 2015, and August 17, 2015.

[20] I find that it is more likely than not that he was hospitalized in an Edmonton Psychiatric Unit between April 9, 2015, and June 29, 2015, because the medical report dictated on June 29, 2015, at page GD3-39, states that he had *recently* been discharged from an Edmonton Psychiatric

⁶ See page GD7-1.

Unit. He was working until April 9, 2015, so I find that it is more likely than not that his hospitalization in Edmonton was at some point between April 9, 2015, and June 29, 2015.

[21] I find that the Claimant has proven that it is more likely than not that his mental illness prevented him from applying for benefits before August 25, 2015, because between April 12, 2015, and August 25, 2015, he attempted suicide and was hospitalized twice because of his mental illness.

[22] I find that the Claimant acted as a reasonable and prudent person would have in his circumstances because given his mental health and hospitalizations it is reasonable that he did not apply for benefits during this period, and, he acted reasonably and prudently by applying for benefits within 10 days after being discharged from the hospital in August.

[23] Because the Claimant has proven that he had good cause for the entire period of delay between April 12, 2015, and August 25, 2015, his initial claim for benefits is considered as having been made on April 12, 2015.

CONCLUSION

[24] The appeal is allowed.

Angela Ryan Bourgeois

Member, General Division - Employment Insurance Section

HEARD ON:	February 7, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	None