



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *V. P. v Canada Employment Insurance Commission*, 2019 SST 470

Tribunal File Number: GE-19-1030

BETWEEN:

V. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Takis Pappas

HEARD ON: March 14, 2019

DATE OF DECISION: April 24, 2019

DECISION

[1] The appeal is dismissed. V. P., whom I will refer to as the Appellant, did not prove that she had good cause for the entire period of delay in making her initial claim for employment insurance benefits. Furthermore, she did not prove that she was available for work as of July 22, 2018.

OVERVIEW

[2] The Appellant lost her employment due to a shortage of work on May 25, 2018. The Appellant waited until July 23, 2018, before applying for benefits, and her benefit period was established effective July 22, 2018. The Appellant, on October 29, 2018, requested that her claim be backdated (antedated) to start on May 25, 2018.

[3] The Respondent, who is the Canada Employment Insurance Commission (Commission), determined that the Appellant did not show good cause for the delay in submitting her initial claim and denied her antedate request and did not prove her availability for work. Upon reconsideration, the Respondent maintained their decisions. The Appellant appeals these decisions to the Social Security Tribunal.

ISSUES

[4] Issue #1: Did the Appellant prove that she had good cause for the entire period she delayed in making her initial claim for benefits?

[5] Issue #2: Does the Appellant qualify for benefits on the earlier day?

[6] Issue #3: Did the Appellant prove that she was available for work as of July 22, 2018.

ANALYSIS

[7] The Appellant bears the burden to prove she had good cause for the entire period of delay in making her claim for benefits. I use the term “burden” to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof is a balance of

probabilities, which means that the facts or events are more likely than not to have occurred as described.

[8] An initial claim for benefits shall be antedated if the following criteria are met:

- a) a claimant proves there was good cause for the delay throughout the entire period; and
- b) she qualifies to receive benefits on the earlier day.¹

[9] For the purpose of proving availability under paragraph 18(1) (a) of the Act, subsection 50(8) of the Act states that the Commission may require the claimant to prove that she is making reasonable and customary efforts to obtain suitable employment.

Issue #1: Did the Appellant prove that she had good cause for the entire period she delayed in making her initial claim for benefits?

[10] The period of delay begins on the earlier day requested and ends on the day when the initial claim was made.

[11] Based on the Record of Employment (ROE) on file, the Appellant's last day paid was May 25, 2018; the Appellant requested an antedate on October 29, 2018. The period of delay is from May 25, 2018, the date the Appellant requested that her claim commence, until July 22, 2018, the date she submitted her initial application for benefits.

[12] In order to prove good cause for the period of delay, the Appellant needs to prove that she acted as a reasonable and prudent person would have done in similar circumstances throughout the entire period of the delay. That is to say, the Appellant took reasonably prompt steps to determine her entitlement to benefits and to ensure her rights and obligations under the Act.²

[13] I must also consider that the obligation and duty to promptly file a claim are seen as very demanding and strict. This is why the "good cause for delay" exception is cautiously applied.³

¹ (Section 10(4) of the Employment Insurance Act (Act))

² (Canada (Attorney General) v Kaler, 2011 FCA 266)

³ (Canada (Attorney General) v Brace, 2008 FCA 118)

[14] The Respondent provided evidence that the Appellant stated she delayed filing her claim because her employer advised her that they had already submitted her application. The Appellant stated that she also attempted to submit an application for benefits, but she did not receive any information.⁴ The Respondent determined that a reasonable person would have made enquiries directly with the Respondent about the possibility of claiming benefits rather than relying on an assumption that her employer submitted her application, to which I agree.

[15] Further, I agree with the Respondent that a prudent and reasonable person would have contacted them sooner. I find that the Appellant did not act as a reasonable person because she did not inquire as to her obligations and responsibilities within the Act and simply assumed her employer had applied for her.

[16] Good cause for delay is not the same as having a good reason, or a justification for the delay. Choosing to rely upon on unfounded and blind assumptions, does not constitute good cause.

[17] I find that the Appellant failed to prove that she had good cause during the entire period of delay in making her initial claim. Accordingly, the Appellant's benefit period cannot be antedated.

[18] I am sympathetic to the Appellant's circumstances; however, she has not shown that, on the balance of probabilities, she did what a reasonable person would have done to determine their rights and obligations under the Act.

Issue #2: Does the Appellant qualify for benefits on the earlier day?

[19] The law requires that claimants meet both factors in order to have their claim back dated. Since the Appellant did not show good cause for the entire period of the delay, I find that the appeal cannot succeed. Therefore, I will not consider whether the Appellant qualified for benefits on the earlier date.

⁴ (GD3-16)

Issue #3: Did the Appellant prove that she was available for work as of July 22, 2018

[20] To receive benefits for a working day in a benefit period, the Appellant must prove, not simply allege, that she was capable of and available for work and unable to obtain suitable work on that day. A working day is any day of the week, except for Saturday and Sunday.

[21] There is no dispute that the Appellant was capable of working as of July 22, 2018. The question before me is whether she was available for work as of that date.

[22] As stated above, the criteria that I must consider to determine if the Appellant was available for work are whether, (i) she had a desire to return to work, (ii) her job search efforts show that she had a desire to find suitable work, and, (iii) she had personal conditions that unduly limited her chances of finding work.

[23] I must also consider whether the Claimant made reasonable and customary efforts to find suitable work.

Did she have a desire to return to the labour market as soon as suitable work was offered?

[24] Yes. I find that the Appellant proved that it is more likely than not that she had a desire to return to the labour market as soon as suitable work was offered.

[25] Evidence of her desire to return to work is the fact that she was waiting for her employer to recall her back to work.

Do her job search efforts show that she had a desire to return to work?

[26] No. I find that the Appellant's lack of job search efforts show that she did not have a desire to return to any other work other than the one offered by her employer.

[27] The Appellant indicated to the Respondent and the Tribunal that did not search for new employment, because she had assurance from the employer that she would be recalled back to work.⁵

⁵ (GD3-25)

[28] The Respondent argued that the Appellant did not search for any jobs because she has restricted any employment opportunities to her employer.

Was she making reasonable and customary efforts to find suitable work?

[29] No. I find that the Appellant was not making reasonable and customary efforts to find suitable work because she solely relied on her recall to work with her former employer.

Did she have personal conditions that unduly limited her chances of finding work?

[30] I find that the Appellant did not have personal conditions that unduly limited her chances of finding work.

[31] In reaching the above decisions, I relied in the guidance of the Court that ruled in similar cases. The Court held that the burden on the claimant to prove availability is a statutory requirement of the legislation that cannot be ignored. In order to obtain employment insurance benefits a claimant must be actively seeking suitable employment, even if it appears reasonable for the claimant not to do so.⁶

⁶ (Canada (AG) v. Cornelissen-O'Neil, A-652-93) (De Lamirande v. Canada (AG), 2004 FCA 311)

CONCLUSION

[32] Having reviewed all the relevant factors, I find that the Appellant failed to prove that she had good cause during the entire period of delay in making her initial claim. I also find that the Appellant did not established that she was available for work as of July 22, 2018 because she relied on her recall to work with her former employer and did not search for any other work.

[33] The appeal is dismissed on all issues.

Takis Pappas

Member, General Division - Employment Insurance Section

HEARD ON:	March 14, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	V. P., Appellant