



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. B. v Canada Employment Insurance Commission*, 2019 SST 393

Tribunal File Number: AD-19-210

BETWEEN:

**M. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Konrad von Finckenstein

Date of Decision: April 29, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The Application is refused

### **OVERVIEW**

[2] The Appellant is contesting the General Division's decision refusing to antedate her Claim. She feels there were reasonable explanations why she filed her claim over a month after losing her job. The general Division was correct in finding that the Appellant did not show good cause for her delay in making her renewal claim throughout the period of the delay

### **ISSUE**

[3] Has the Appellant presented good cause for the delay of filing her claim in late October rather than immediately being late off on September 7, 2018.

### **ANALYSIS**

[4] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[5] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his or her case but must establish that the appeal has a reasonable chance of success based on a reviewable

error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[6] Therefore, before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[7] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

[8] There is no issue here that the Appellant was entitled to benefits upon being laid off. To obtain these benefits the Appellant had to file a claim to establish her benefit period.

[9] Section 10 of the Employment Insurance Act provides how the benefit period is calculated

**10 (1)** *A benefit period begins on the later of*

*(a) the Sunday of the week in which the interruption of earnings occurs, and*

*(b) the Sunday of the week in which the initial claim for benefits is made.*

*(2) Except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks.*

.....

*(4) An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.*

*5. A claim for benefits, other than an initial claim for benefits, made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.*

[10] Furthermore Section 26 of the Employment Insurance Regulations stipulates:

*26 (1) Subject to subsection (2), a claim for benefits for a week of unemployment in a benefit period shall be made by a claimant within three weeks after the week for which benefits are claimed.*

*(2) Where a claimant has not made a claim for benefits for four or more consecutive weeks, the first claim for benefits after that period for a week of unemployment shall be made within one week after the week for which benefits are claimed.*

[11] In this case the Appellant was laid off on September 7, 2018. She went overseas to visit her sick father in Romania and did not return till September 17. Upon return she was looking for a job and looked after her sick mother. As she has already booked a vacation in August, which was not cancellable, she went on vacation from October 6 to October 13.

[12] Only upon returning from her vacation did she file a claim for employment insurance.

[13] As she clearly did not make her claim within the four weeks stipulated in s. 26(2) of the regulations she asks that her claim be antedated, invoking ‘good cause’ provisions of s. 10(4) of the Act.

[14] The grounds for antedating claims were succinctly laid down in *A.G. v. Kaler* where Laydon-Stevenson J.A. stated

*The antedating of claims is permissible under subsection 10(4) of the Act in circumstances where good cause for the delay in applying for benefits is established. To establish good cause, the jurisprudence of this Court requires that a claimant “be able to show that [she] did what a reasonable person in [her] situation would have done to satisfy [herself] as to [her] rights and obligations under the Act”: Canada (A.G.) v. Albrecht, [1985] 1 F.C. 710 (C.A.) (Albrecht). It is also settled law that a claimant has an obligation to take “reasonably prompt steps” to determine entitlement to benefits and to ensure her rights and obligations under the Act: Canada (A.G.) v. Carry, 2005 FCA 367 (CanLII), 344 N.R. 142 (Carry). This obligation imports a duty of care that is both demanding and strict:*

*Albrecht, para. 13. Good cause must be shown throughout the entire period for which the antedate is required: Canada (A. G.) v. Chalk, 2010 FCA 243 (CanLII). Ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause: Canada (A.G.) v. Somwaru, 2010 FCA 336 (CanLII); Carry, para. 5.*

[15] In this case the Applicant pointed to:

- her father's illness,
- the fact that she looked after alternative employment,
- the fact that she could not cancel her vacation as it was not refundable,
- the fact that she was turning fifty and
- that she had to look after her ailing mother

as constituting good cause for not filing in time and entitling her to antedating.

[16] While each one of these reasons may have caused stress and anxiety to the Appellant these are not factors that would have prevented a reasonable person in her position from making a claim. Surely while worrying about finding a new job or while vacationing a reasonable person would have thought about unemployment insurance and inquired about when and how to make a claim.

[17] The Appellant did not meet the requirement of s 10(4) that *'there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made ( Underlining added).*

[18] Accordingly there is no question of natural justice, jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

**CONCLUSION**

[19] The Application is refused.

Konrad von Finckenstein  
Member, Appeal Division

REPRESENTATIVES:	Applicant - Self-represented
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