



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. A. v Canada Employment Insurance Commission*, 2019 SST 1035

Tribunal File Number: GE-19-2308

BETWEEN:

M. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

HEARD ON: July 3, 2019

DATE OF DECISION: July 3, 2019

DECISION

[1] The appeal is dismissed. The Tribunal finds that the Appellant has not shown good cause for the entire period of the delay in applying for employment insurance (EI) benefits; therefore, the antedate request is refused.

OVERVIEW

[2] The Appellant made an initial application for regular EI benefits on April 8, 2019. She was employed until August 31, 2018 as a researcher at a university.

[3] The Appellant requests that her claim for EI benefits be antedated to September 1, 2018 from April 8, 2019 in order to become eligible for EI benefits earlier.

[4] She claims that she delayed making an initial application for EI benefits because she expected to be re-employed soon after separating from her employment, she was unfamiliar with the EI system, she was waiting for her employer to send her Record of Employment and she was not told to apply for EI by her employer.

[5] The Respondent refused the antedate request because the Appellant failed to show good cause for the entire period of delay in requesting an antedate.

ISSUE(S)

[6] Issue 1: Does the Appellant qualify to have her claim antedated to September 1, 2018 from April 8, 2019?

[7] Issue 2: Did the Appellant qualify for EI benefits on the earlier day?

ANALYSIS

Issue 1: Does the Appellant qualify to have her claim antedated to September 1, 2018 from April 8, 2019?

[8] The antedating or backdating of an initial claim for EI benefits is possible under subsection 10(4) of the *Employment Insurance Act (EI Act)*. The claimant must show that:

a) there was good cause for the delay, throughout the entire period of the delay; and

b) he qualified for EI benefits on the earlier day.

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

[10] Good cause for delay in filing claim reports must be shown throughout the entire period for which the antedate is required (*Canada (Attorney General) v. Chalk*, 2010 FCA 243). The burden of proof rests on the claimant (*Canada (Attorney General) v. Kaler*, 2011 FCA 266).

[11] The Tribunal finds that the Appellant has not shown good cause for the entire delay in making a claim for an antedate of her initial EI application.

[12] The Appellant requests an antedate to September 1, 2018 from April 8, 2019, just after the day that she last worked on August 31, 2018.

[13] The Appellant claims that she delayed in making an initial application for EI benefits because she expected to be re-employed soon after separating from her employment, she was unfamiliar with the EI system, she was waiting for her employer to send her Record of Employment and she was not told to apply for EI by her employer.

[14] The Appellant did not attempt to contact the Respondent during the period of time for which she requests an antedate because she did not know that the EI system was in place for benefits despite that she worked sporadically during a potential benefit period. She said that she applied for EI benefits immediately after learning that she could apply for benefits when meeting with her tax accountant in April 2019.

[15] To prove good cause for the delay in filing an initial claim for EI benefits, claimants must demonstrate that they did what a reasonable and prudent person would have done in the same circumstances to satisfy themselves as to their rights and obligations under the EI Act (*Kamgar v. Canada (Attorney General)*, 2013 FCA 157).

[16] The Tribunal finds that the Appellant has not demonstrated that she did what a reasonable and prudent person would have done in the same circumstances.

[17] The Appellant made no enquiries of the Respondent about an initial claim for regular EI benefits and her rights and responsibilities throughout the entire period of time for which she asks that she be entitled to an antedating and the Tribunal finds that it is her own responsibility to do so, not her employer's responsibility.

[18] Unless exceptional circumstances exist, a claimant has an obligation to take "*reasonably prompt steps*" to determine entitlement to EI benefits and to ensure her rights and obligations under the *Employment Insurance Act* (*Canada (Attorney General) v. Carry*, 2005 FCA 367; *Canada (Attorney General) v. Somwaru*, 2010 FCA 336).

[19] Ignorance with the EI application process and ignorance of the law, brought about by good faith, would constitute good cause so long as the claimant was able to establish that he or she had acted as a reasonable and prudent person or established the existence of exceptional circumstances (*Canada (Attorney General) v. Beaudin*, 2005 FCA 123; *Shebib v. Canada (Attorney General)*, 2003 FCA 88).

[20] The Tribunal finds that the Appellant has not established exceptional circumstances for the delay in making an initial claim for EI benefits and that good cause for the delay is not the same as having a good reason, or a justification for the delay.

[21] The Tribunal does not accept that she acted like a reasonable person in her situation would have done to verify her rights and obligations under the *Employment Insurance Act* (*Somwaru*). A reasonable person would have contacted the Respondent to ask about her EI claim rights and responsibilities long before she did in the period of time from September 1, 2018 to April 8, 2019.

[22] Antedating the claim for benefits may adversely affect the integrity of the system where the Commission finds itself in the difficult position of having to engage in a job or process of reconstruction of the events, with the costs and hazards pertaining to such a process. It is a long established principle by the jurisprudence of the Court, that ignorance of *the Employment Insurance Act* does not excuse a delay in filing an initial claim for benefits (*Beaudin*).

[23] EI claimants are required to promptly file a claim for EI benefits and to satisfy the necessary conditions of eligibility. The Tribunal must apply EI legislation to all equally regardless of personal circumstances.

[24] While the Tribunal is sympathetic to the Appellant's personal circumstances including her unfamiliarity with the EI system, she delayed for several months to make an initial claim for regular EI benefits and did not demonstrate good cause throughout the entire period of the delay from September 1, 2018 from April 8, 2019. She did not show that, on the balance of probabilities, she did what a reasonable and prudent person in his circumstances would have done to satisfy herself as to her rights and obligations.

Issue 2: Did the Appellant qualify for EI benefits on the earlier day?

[25] The law requires that the claimant meet both factors in order to have her claim antedated. Since the Appellant has not shown good cause for the entire duration of the delay, the Tribunal finds that the appeal cannot succeed. Therefore, the Tribunal will not consider whether she qualified for EI benefits on the earlier date.

CONCLUSION

[26] The appeal is dismissed. The Appellant's request to antedate her claim for EI benefits under subsection 10(4) of the *EI Act* is refused.

Glen Johnson

Member, General Division - Employment Insurance Section

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| HEARD ON: | July 3, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| PARTIES IN ATTENDANCE | No one appeared |