



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation : *J. W. v Canada Employment Insurance Commission*, 2019 SST 735

Tribunal File Number: GE-19-2302

BETWEEN:

**J. W.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Amanda Pezzutto

HEARD ON: July 2, 2019

DATE OF DECISION: July 11, 2019

## **DECISION**

[1] I am dismissing the Claimant's appeal.

## **OVERVIEW**

[2] The Claimant stopped working in August 2018 and completed an online application for employment insurance benefits right away. He did not have his last Record of Employment (ROE) when he applied. He did not give a copy of the ROE to the Canada Employment Insurance Commission (Commission) until late January 2019. He asked the Commission to start his benefits in August 2018. The Commission decided that the Claimant did not have good cause for his delay and refused to start his benefits in August. The Claimant asked the Commission to review its decision. The Commission did not change its decision. The Claimant appealed to the Tribunal.

[3] The Claimant has not proven that he acted reasonably. He has not proven that he made reasonable efforts to understand what he needed to do to complete his application for employment insurance. He does not have good cause for his delay. His benefits cannot start in August.

## **ISSUES**

[4] Issue 1 – When did the Claimant complete his application for employment insurance benefits?

[5] Issue 2 – Does the Claimant have good cause for his delay in applying for employment insurance benefits?

## **ANALYSIS**

### **Issue 1: When did the Claimant complete his application for employment insurance benefits?**

[6] The Claimant completed his application for employment insurance benefits when he submitted his ROE on January 31, 2019.

[7] The Commission asks for information about your circumstances and your past employment before it will start paying employment insurance benefits. You cannot receive employment insurance benefits until you provide all of the necessary information to the Commission.<sup>1</sup> The ROE gives the Commission information about your hours and earnings. This information is necessary to complete your application for employment insurance. An online application without an ROE is not complete. It is not complete until you give the Commission a copy of the ROE.

[8] The Claimant stopped working on August 21, 2018. He completed an online application for employment insurance benefits the next day, but he did not bring in his ROE until January 31, 2019.

[9] The Claimant needed to give the Commission a copy of his ROE to complete the application he started on August 22, 2018. He did not give the Commission his ROE until January 31, 2019. This means that he completed his application for employment insurance benefits on January 31, 2019.

[10] Since his last day of work was August 21, 2018, and he did not complete his application for employment insurance benefits until January 31, 2019, his application for benefits was late. I must decide whether he had good cause for being late.

**Issue 2: Does the Claimant have good cause for his delay in applying for employment insurance benefits?**

[11] The Claimant does not have good cause for his delay. He has not shown that he acted as a reasonable person in the same situation would have done.

[12] When your application for employment insurance benefits is later than your last day of work, the Commission usually starts your benefit period in the week you applied.<sup>2</sup> You can ask

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<sup>1</sup> Section 48 of the *Employment Insurance Act* says that the Commission will not establish a benefit period until the claimant supplies the information that the Commission needs. Section 50(5) of the *Employment Insurance Act* allows the Commission to ask for any extra information, and section 50(1) of the *Employment Insurance Act* says that a claimant is not entitled to receive any benefits until they comply with the Commission's requirements.

<sup>2</sup> Section 10(1) of the *Employment Insurance Act*.

the Commission to start your benefit period earlier, but you have to show that you qualify for benefits on the earlier date, **and** that you have good cause for being late.<sup>3</sup>

[13] You show that you have good cause for being late by proving that you acted reasonably. Imagine a reasonable person in the same situation as yours. What would that person do to understand their employment insurance entitlement?<sup>4</sup> Unless your situation was somehow exceptional, you have to prove that you acted reasonably quickly to understand what you needed to do to receive employment insurance benefits.<sup>5</sup>

[14] At the hearing, the Claimant said that he did not have his ROE when he first applied for employment insurance online. He had to wait for the employer to prepare the ROE. When he finally got the ROE in September, he was sick and could not come into a Service Canada to drop off the ROE. He was sick from September 15 to October 30, 2018. He provided a doctor's note proving this.

[15] The Claimant returned to work at the end of October and started working full-time. He tried calling the Commission once to ask about his employment insurance at the end of October or early November. He was on hold, got frustrated, and hung up. He did not try calling again. He did not mail the ROE to the Commission because he did not know where to find a mailbox.

[16] At the hearing, the Claimant said that he thought that he had six months to finish his application for employment insurance. He took a day off work at the end of January 2019 and went into a Service Canada to drop off his ROE.

[17] I understand that the Claimant did not drop off his ROE right away because he did not have it. I understand that he was sick until October 30 and could not go to Service Canada in person while he was sick. However, this does not explain why the Claimant waited another three months after getting better to drop off his ROE. Even though he was working, he could have

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<sup>3</sup> Section 10(4) of the *Employment Insurance Act*.

<sup>4</sup> Claimants have to prove that they acted as a reasonable person in the same situation would have done to understand their rights and obligations under the *Employment Insurance Act*. The Federal Court of Appeal says this at paragraph 4 in its decision *Canada (Attorney General) v. Kaler*, 2011 FCA 266.

<sup>5</sup> At paragraph 11 in its decision *Canada (Attorney General) v. Somwaru*, 2010 FCA 336, the Federal Court of Appeal says that, "barring exceptional circumstances, a prospective claimant ... is expected to take 'reasonably prompt steps'" to understand their obligations under the *Employment Insurance Act*.

tried to find more information. He only tried calling the Commission once, and did not try again. He did not look for information online. He did not make any effort to find a post office or mailbox so he could mail the ROE to the Commission.

[18] A reasonable person in the Claimant's situation would have made more effort to speak to the Commission. They might have called again, searched for information online, or taken a day off work sooner so that they could talk to someone in person. The Claimant did none of these things. He has not proven that he acted the same as a reasonable person in the same situation. He has not proven that he has good cause for his delay in applying for employment insurance benefits.

### **CONCLUSION**

[19] I am dismissing the Claimant's appeal.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	July 2, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. W., Appellant