



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. W. v Canada Employment Insurance Commission*, 2019 SST 741

Tribunal File Number: GE-19-2251

BETWEEN:

C. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christopher Pike

HEARD ON: July 16, 2019

DATE OF DECISION: July 22, 2019

DECISION

[1] The Appellant, C. W., is the Claimant in this appeal. Her appeal is allowed. The result is that the Claimant is entitled to have her claim antedated to October 22, 2015. These reasons explain why.

OVERVIEW

[2] The Claimant left her employment on July 25, 2015 to travel outside of Canada to care for her terminally ill mother. She returned to the same employment on May 16, 2016. In March 2018 she learned that the employment insurance regime provides a compassionate care benefit when a co-worker took time off and received those benefits.

[3] The Claimant submitted a claim for compassionate care benefits to Canada Employment Insurance Commission (which I call the Commission in this decision) and asked that it be treated as if it had been made on October 22, 2015. The Commission declined to do and refused to pay the benefit. The Commission maintained its refusal on reconsideration. The Claimant appealed to the Tribunal.

PRELIMINARY MATTERS

[4] When the Commission made its original decision, it also determined that the Claimant had not established that she had accumulated enough hours of insurable employment to qualify for benefits in May 2018. It upheld this decision on reconsideration. Since then the Claimant has produced a Record of Employment showing the hours she had accumulated to June 1, 2018. In its submissions to the Tribunal, the Commission conceded that the Claimant had proven that she had established her qualification for benefits in May 2018.

[5] I have reviewed the evidence and submissions in the file and agree with the Commission that the appeal should be allowed. I am satisfied that the Claimant has shown that she accumulated the hours required to qualify for benefits in May 2018. Her appeal about that issue is allowed. The focus of the Claimant's appeal is her application for compassionate care benefits payable from October 22, 2015.

ISSUES

[6] I have to decide if the Claimant:

- a) has shown good cause for delaying her application for employment insurance benefits until May 27, 2018; and
- b) has shown that she is qualified for employment insurance benefits on October 22, 2015.

ANALYSIS

[7] The Commission may treat an initial claim for employment insurance benefits as if the claimant made it on at an earlier date.¹ A claimant has to prove that they had good cause for the entire period of delay in making their application.²

The Claimant shown good cause for delaying her application for the entire period of the delay

[8] A claimant who delays their application because they were ignorant of their legal rights and obligations may still have good cause.³ What the claimant has to prove is that they acted as a reasonable and prudent person would have acted in their circumstances.⁴ I have to judge each case of a delayed application on its own facts.⁵

[9] The Claimant acknowledged that she did not know the compassionate care benefits existed in the *Employment Insurance Act* until March 2018. The Commission asserts that the Claimant did not act like a reasonable person in her situation would have done in October 2015 to satisfy themselves of their rights and obligations under the *Employment Insurance Act*. It says that “that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause”.⁶

¹ Section 10(4) of the *Employment Insurance Act* gives the Commission this authority. The Commission describes what they do when they apply section 10(4) of the Act as “antedating”. The *Employment Insurance Act* set the legal requirements to make a claim and to appeal the Commission’s decisions in relation to them as established by Parliament. I refer to other provisions of this legislation in this decision.

² *Canada (Attorney General) v. Kaler*, 2011 FCA 266 explains this principle. The law requires me to apply the principles set by courts. I refer to other cases that explain the *Employment Insurance Act* in this decision.

³ *The Attorney General of Canada v Caron*, A-395-85 explains this principle.

⁴ *Quadir v. Canada (Attorney General)*, 2018 FCA 139 explains this principle at paragraph 4.

⁵ *Shebib v. Canada (Attorney General)*, 2003 FCA 88 explains this principle.

⁶ The Commission appears to be quoting a passage from *Attorney General of Canada v Kaler*, 2011 FCA 266 here.

[10] However, ignorance of the law and good faith actions may constitute good cause so long as a claimant establishes that they had acted as a reasonable and prudent person or if they establish exceptional circumstances.⁷

[11] I have to objectively examine whether the Claimant acted reasonably in the circumstances, but I have to consider his subjective appreciation of those circumstances.⁸ Because a claimant is obliged to file their claim promptly demanding and strict, decision makers generally have to apply the “good cause for delay” exception cautiously.⁹ However, a claim for special benefits, including the compassionate care benefit, may be approached more leniently.¹⁰

[12] The Claimant testified left her employment on July 25, 2015 to travel outside of Canada to care for her terminally ill mother. She exhausted her vacation and other leave entitlement in October 2015. Her mother passed away on December 23, 2015. On May 16, 2016, the Claimant returned to the employment she left on July 25, 2016.

[13] The Claimant testified that she has never made an employment insurance claim. She also testified that she learned about the compassionate care benefit included in the employment insurance regime in 2018 when a co-worker took time off and received those benefits. She said that her employer did not inform her that the compassionate care benefits existed when she left her employment in 2015.

[14] The Claimant submitted a claim for compassionate care benefits to the Commission on May 27, 2018 and asked that it be treated as if it had been made on October 22, 2015.

[15] This evidence shows that the Claimant no experience with the unemployment insurance system. It also shows that the Claimant’s employer did not make her aware of the benefit.

[16] I have considered that the compassionate care benefits are, to a reasonable person, out of sync with what one expects from unemployment insurance scheme and her untimely claim for benefits causes no apparent prejudice to the proper administration of the *Employment Insurance*

⁷ *Canada (Attorney General) v. Beaudin*, 2005 FCA 123 explains this principle.

⁸ *Quadir v. Canada (Attorney General)*, 2018 FCA 21 explains this principle at paragraph 12.

⁹ *Canada (Attorney General) v. Brace*, 2008 FCA 118 gives this direction.

¹⁰ This is explained at paragraphs 49 to 51 of *De Jesus v. Canada (Attorney General)*, 2013 FCA 264.

Act.¹¹ Considering these circumstances, I find that the Claimant's ignorance of the law and of the existence of the compassionate care benefit shows good cause for delaying her application for benefits from October 22, 2015 until March 2018.

[17] The Claimant testified during this time she was working 14-hour days carrying her own workload and that of her colleague. She was travelling by road and air to 14 communities in Northern Canada to perform her duties. She asserted that her workload and associated travel explain why she delayed from March 2018 until May 27, 2018 to make her claim.

[18] Considering the hours that the Claimant worked from March to May 2018 and the nature of her work-related travel during that time, I find that she has good cause for her delayed application during that period.

[19] In summary, I find that the Claimant has shown good cause for delaying her application for benefits from October 22, 2015 to May 27, 2018.

The Claimant has shown that she was qualified for benefits on the day she wishes to start her claim

[20] The Claimant must also establish that she was qualified to receive benefits on the earlier day on which she wishes to start her claim.

[21] The Commission stated in its submissions that the Claimant qualified for benefits on October 22, 2015. Considering this submission, I find that the Claimant was qualified to receive on October 22, 2015.

CONCLUSION

[22] The appeal is allowed.

Christopher Pike
Member, General Division - Employment Insurance Section

¹¹ See CUB 14019 for a similar result.

HEARD ON:	July 16, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. W., Appellant