



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. S. v Canada Employment Insurance Commission*, 2019 SST 886

Tribunal File Number: GE-19-2425

BETWEEN:

A. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: July 10, 2019

DATE OF DECISION: July 19, 2019

DECISION

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

OVERVIEW

[2] The Claimant stopped working in October. He applied for employment insurance benefits about a week after he stopped working. The Claimant did not give his copy of the Record of Employment (ROE) to the Canada Employment Insurance Commission (Commission) when he applied. The Commission did not receive a copy of the Claimant's ROE until late February. The Commission decided that the Claimant could not receive employment insurance benefits earlier because he submitted his ROE too late. The Commission decided that the Claimant did not have good cause for his delay in submitting the ROE. The Claimant asked the Commission to review its decision. The Commission did not change its decision. The Claimant appealed to the Tribunal.

[3] I am allowing the Claimant's appeal. The Claimant acted like a reasonable person. He acted like someone who wanted to understand how to complete his employment insurance application. His employer gave him incorrect advice about how to submit the ROE. This makes the Claimant's situation exceptional. The Claimant has good cause for his delay.

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

[6] 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.¹ 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.

[7] 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.² You can ask 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.³

[8] 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?⁴ 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.⁵

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

[9] The Claimant completed his application for employment insurance benefits when he submitted his ROE on February 22, 2019.

[10] The Claimant stopped working on October 20, 2018. He completed an online application for employment insurance benefits on October 28, 2018. The Commission did not get his ROE until February 22, 2019.

¹ 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.

² Section 10(1) of the *Employment Insurance Act*.

³ Section 10(4) of the *Employment Insurance Act*.

⁴ 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.

⁵ 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*.

[11] The Claimant needed to give the Commission a copy of his ROE to complete the application he started on October 28, 2018. The Commission received his ROE on February 22, 2019. This means that the Claimant completed his application for employment insurance benefits on February 22, 2019.

[12] Since the Claimant's last day of work was October 20, 2018 and he did not complete his application for employment insurance benefits until February 22, 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?

[13] The Claimant has good cause for his delay. He acted like a reasonable person and he tried to understand what he needed to do to complete his application. He had exceptional circumstances because his employer gave him incorrect advice about how to hand in the ROE.

[14] The Claimant said that this was his first job. He had never claimed employment insurance benefits before. He also said his employer was a new company and they did not issue many ROEs. I believe that neither the Claimant nor the employer had much experience with the employment insurance program. This is an important factor because it explains why both the Claimant and his employer were confused about how to hand in the ROE.

[15] After he stopped working, the Claimant said that his employer gave him the ROE in an envelope and told him to mail it to Service Canada. He mailed the ROE right away, at the end of October. I believe the Claimant because he provided a text message from December where he tells the employer that he already mailed the ROE. It is likely that the Claimant mailed the control copy of the ROE to the Commission. The Commission uses this copy of the ROE to compare against the claimant copy. The Commission does not use the control copy of the ROE to complete an application for employment insurance benefits.

[16] The Claimant said that he started doing his biweekly claimant reports. He checked his online Service Canada account and noticed that the ROE was missing. He asked the employer about the missing ROE. The Claimant included copies of his text messages to the employer. The

accountant told the Claimant that there were three copies of the ROE: one for the employer, one for Service Canada, and one for the Claimant to keep.

[17] The employer's advice to the Claimant was incorrect. The Claimant should have brought his own copy of the ROE to Service Canada when he applied for employment insurance. However, it was reasonable for the Claimant to follow the employer's advice. It was reasonable for him to think that he was mailing the ROE to Service Canada when he sent the control copy of the ROE to the Commission.

[18] The Claimant said that he kept trying to get a copy of the ROE to complete his application. He said that he brought his copy of the ROE to Service Canada in January. I do not know why the ROE shows a date stamp of February 22, 2019. However, I believe the Claimant. He provided text messages between himself and his employer from January. The Claimant and his employer talked about the missing ROE. It is likely that the Claimant brought a copy of the ROE to Service Canada after he talked to his employer. I believe that he brought a copy of his ROE to the Commission in January.

[19] The text messages between the Claimant and the employer show that the Claimant acted like a reasonable person. He tried to understand what he needed to do to complete his application for employment insurance benefits. Furthermore, the Claimant's situation is exceptional. His employer gave him incorrect advice about how to submit his ROE to the Commission. The Claimant thought he was sending his ROE to the Commission in October, but he was probably mailing the control copy of the ROE. Finally, I believe that the Claimant brought the ROE to the Commission in January, but the Commission did not date stamp the ROE until February 22.

[20] The Claimant had good cause for his delay in completing his application for employment insurance benefits. His benefits should start on the earlier date.

CONCLUSION

[21] I am allowing the Claimant's appeal.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	July 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. S., Appellant