



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. M. v Canada Employment Insurance Commission*, 2019 SST 1490

Tribunal File Number: GE-19-2479

BETWEEN:

R. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Yoan Marier

HEARD ON: July 18, 2019

DATE OF DECISION: July 23, 2019

DECISION

[1] The Appellant has not shown good cause for her delay in filing her claim. The appeal is dismissed for the following reasons.

OVERVIEW

[2] The Appellant, R. M., stopped working for her employer on October 12, 2018. She waited until January 4, 2019, to apply for Employment Insurance benefits.

[3] The Canada Employment Insurance Commission reviewed the claim. It determined that the Appellant had not had good cause for the delay in filing her claim. The Commission therefore refused to [translation] “antedate”¹ the claim to the date she stopped working. As a result, the Appellant was not able to receive benefits for her initial months of unemployment.

[4] The Appellant is now challenging the Commission’s decision. She argues that she was not able to file her claim on time because she was sick and travelling abroad for part of the delay. In addition, she argues that she was waiting for her Record of Employment from her employer.

ISSUE

[5] Can the claim filed on January 4, 2019, be antedated to October 12, 2018?

ANALYSIS

[6] Claimants must file their Employment Insurance claims as soon as possible after they stop working. This requirement is strictly applied.²

[7] When a claimant delays in filing their claim, the claim will be antedated only if the following two criteria are satisfied:³

¹ This word is used in Employment Insurance jargon. A claim is [translation] “antedated” when it is considered to have been filed on an earlier date.

² *Canada (Attorney General) v Brace*, 2008 FCA 118.

³ *Employment Insurance Act*, s 10(4).

- a) The claimant qualified to receive benefits on an earlier date.⁴
- b) The claimant had good cause for the delay throughout the period of the delay.

[8] However, it must be remembered that antedating a claim is a benefit that is applied as an exception.⁵

[9] In this case, the first criterion is not at issue. Everyone acknowledges that the Appellant satisfied the basic conditions for receiving benefits when she stopped working on October 12, 2018.

[10] The parties do not agree, however, on the second criterion. The Appellant argues that she had good cause for filing her claim late, while the Commission argues the opposite.

[11] The Appellant must show that she did what a reasonable and prudent person would have done in similar circumstances throughout the period of the delay.⁶

[12] The Appellant stopped working on October 12, 2018, after her contract with the Canada Revenue Agency ended. Her claim was filed on January 4, 2019, that is, more than two and a half months after she stopped working.

[13] To explain her delay in filing her claim, the Appellant essentially makes three arguments. She argues that she was suffering from anemia in the fall of 2018 and that she was very tired during that period. She travelled abroad for nearly six weeks, between November 13 and December 28, 2018, to undergo traditional medical treatment. Furthermore, she submits that she believed that she needed a Record of Employment to file her claim.

[14] In my view, the Appellant's arguments do not constitute good cause.

[15] First, it is unlikely that the Appellant's medical issues were tiring her out to the point that they prevented her from filing a claim during that entire period. In fact, the Appellant confirmed

⁴ This date generally corresponds to when the claimant should have filed their claim (that is, when earnings stopped).

⁵ *Canada (Attorney General) v Scott*, 2008 FCA 145.

⁶ This is the interpretation of "good cause" used by the Federal Court of Appeal. For example, see *Canada (Attorney General) v Burke*, 2012 FCA 139.

that she went to her university classes until at least early November. She was then able to arrange a trip and travel abroad for nearly six weeks.

[16] Filing a claim is a task that takes a few minutes, and even a tired, stressed, or busy person is usually able to do it. If the Appellant had the capacity to go to her classes and take a long trip abroad, I find that she had the capacity to file a claim at some point during the delay.

[17] The Appellant travelled abroad to undergo traditional medical treatment for her anemia. In my view, the Appellant's choice to undergo that type of treatment abroad was an entirely personal one—treatment for anemia exists in Canada. Therefore, the Appellant's decision does not constitute good cause for the late filing of her claim. What is more, the Appellant confirmed that she had access to the Internet in the country where she was located. Therefore, her claim could have been filed during the trip.

[18] Finally, the Appellant argues that she delayed filing her claim because she incorrectly believed that she needed her Record of Employment to file her claim. However, the Act does not require it. Furthermore, the claim form clearly allows claimants to file their claims without having a Record of Employment.⁷ In similar cases, the case law has established that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause.⁸

[19] When in doubt, the Appellant needed to confirm her information with the Commission. Unfortunately, the Appellant did not make any effort to contact the Commission (or any other person likely to inform her) during the delay.

[20] A person who wants to receive benefits has an obligation to take prompt steps to inform themselves of their rights and obligations under the Act and to act accordingly. Exceptions to this rule can be made, but only in special circumstances.⁹ I find that the grounds raised by the Appellant do not constitute special circumstances.

⁷ GD3-7.

⁸ *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁹ *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[21] In light of this, I am forced to find that the Appellant did not do what a reasonable and prudent person would have done in similar circumstances. I find that a reasonable and prudent person would have taken the necessary steps to get information from the Commission and to file a claim when their work stoppage began.

CONCLUSION

[22] The claim cannot be antedated. The appeal is dismissed.

Yoan Marier
Member, General Division – Employment Insurance Section

HEARD ON:	July 18, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	R. M., Appellant