



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. L. v Canada Employment Insurance Commission*, 2019 SST 1518

Tribunal File Number: GE-19-2531

BETWEEN:

D. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christopher Pike

HEARD ON: July 23, 2019

DATE OF DECISION: July 31, 2019

DECISION

[1] I call the Appellant the Claimant in this decision. His appeal is dismissed. The result is that the Claimant's claim cannot be antedated. These reasons explain why.

OVERVIEW

[2] The Claimant took medical leave from his employment on April 9, 2018 because of a poisoned work environment. He received employment insurance sickness benefits for the 15 weeks ending August 4, 2018. He did not return to his employment after his sickness benefits claim ended.

[3] The Claimant filed a complaint with the Ministry of Labour, hoping to rectify the issues which poisoned his workplace. On November 27, 2018 the Ministry ordered his employer to complete its investigation into the Claimant's complaint by February 15, 2019. The Claimant testified that his employer did not complete the investigation satisfactorily. His employment ended on February 28, 2019.

[4] The Claimant applied for regular employment insurance benefits on March 8, 2019. He asked the Canada Employment Insurance Commission through its agent Service Canada to antedate his claim to August 5, 2018. (I refer to the Commission and Service Canada as the Commission in this decision.) The Commission refused the Claimant's request because it said he had not shown good cause for delaying his request.

[5] The Commission upheld its decision after the Claimant asked it to reconsider. The Claimant appealed to the Tribunal.

ISSUE

[6] I have to decide if the Claimant has shown good cause for delaying his application for employment insurance benefits from August 5, 2018 to March 8, 2019.

ANALYSIS

[7] The Commission may treat a claim for employment insurance benefits as if the claimant made it on at an earlier date.¹ For this to happen, a claimant has to prove that they had good cause for the entire period of delay in making their application.² Because a claimant is obliged to file their claim promptly, decision makers have to apply antedating cautiously.³

The Claimant has not shown good cause throughout the period of delay

[8] A claimant has to make weekly claim reports within three weeks after the week for which benefits are claimed.⁴ However, if a claimant has not made a claim for four or more consecutive weeks, then they have to make a claim within one week of the week for which they claimed benefits. Thus, the Claimant has to explain why he did not claim benefits between August 5, 2018, the day to which he asks for antedating, and March 8, 2019, the day he made his claim.

[9] A claimant has to show good cause for delaying their claim by proving that they acted as a reasonable and prudent person would have acted in their circumstances throughout the entire period of the delay⁵.

[10] The Claimant testified that he took leave from his employment in April 2018 due to an anxiety disorder brought on by working conditions that he described as poisonous. The Commission acknowledged in its submissions that the Claimant exhausted his entitlement to employment insurance sickness benefits on August 4, 2018. This indicates that he qualified for employment insurance sickness benefits in late April 2018.

[11] The Claimant testified that he contacted the Commission around August 29, 2018 to determine if it could give him more financial assistance. He testified that he told the Commission

¹ Section 10(4) of the *Employment Insurance Act* gives the Commission this authority. The *Employment Insurance Act* and *Employment Insurance Regulations* set the legal requirements to make a claim and to appeal the Commission's decisions in relation to them as established by Parliament.

² *Canada (Attorney General) v. Kaler*, 2011 FCA 266 explains this principle. The law requires me to apply the principles set by courts.

³ *Canada (Attorney General) v. Brace*, 2008 FCA 118 imposes this requirement.

⁴ Section 26 of the *Employment Insurance Regulations* imposes this requirement.

⁵ *Quadir v. Canada (Attorney General)*, 2018 FCA 139 explains this principle.

he was still ill and unable to return to his employment for that reason. He said the Commission told him that he did not qualify for benefits.

[12] The Claimant testified that he learned in March 2019 that he could have applied for regular employment insurance benefits in August 2018. He filed his renewal claim on March 8, 2019. He asked his doctor to certify that he had been medically able to return to work on August 5, 2018. His doctor did so in a report dated April 10, 2019. The Claimant filed his antedating request with the Commission on April 11, 2019.

[13] The April 10, 2019 medical certificate shows that the Claimant had recovered from his illness to the point where he could return to employment by August 5, 2018. However, he testified that told the Commission around August 29, 2018 that he was not medically fit for employment. I accept the doctor's certificate as reliable evidence of the Claimant's fitness for work from August 5, 2018 because the certificate shows the objective opinion of a medical professional.

[14] The Claimant has adopted his doctor's opinion and now says that he has been medically fit for employment since August 5, 2018. He also told the Commission that he looked for new employment while he waited for the workplace investigation to end. He would not have looked for employment unless he was satisfied in his own mind that he was medically fit for work. On November 27, 2018, the Ministry of Labour ordered the employer to complete its investigation by February 15, 2019, so this evidence shows that the Claimant looked for alternate employment at least between November 27, 2018 and February 15, 2019.

[15] A reasonable and prudent person in the Claimant's circumstances would have asked the Commission if the fact that they had regained medical fitness for work would qualify them to receive employment insurance benefits. His evidence shows that he did not make those enquiries until March 2019. A reasonable and prudent person would have made those enquiries of the Commission after November 27, 2018 and before February 15, 2019.

[16] The Claimant argued that he delayed filing his claim in part because he "is not a regular receiver of the EI benefits". Not knowing one's rights and obligations is not an excuse for failing

to submit a claim to the Commission in a timely manner unless the Claimant shows that what he did was reasonable under the circumstances.⁶

[17] The Claimant also argued that the Commission has a general duty to advise claimants. This is not so, a claimant is responsible for presenting their claim for benefits and seeking a determination on their entitlement.⁷

[18] As well, the Claimant asserted that the Commission gave him wrong advice in August 2018. The advice that the Commission gave the Claimant in August 2018 was not subject to a reconsideration decision, so I do not have authority to assess whether it was correct.⁸ In any event, advice given by the Commission which is inconsistent with the *Employment Insurance Act*, whether made in good faith or bad faith, is absolutely void.⁹ I therefore find that even if the Commission gave the Claimant wrong advice in August 2018, he cannot rely on that error to support his claim for antedating.

[19] By asking for antedating to August 5, 2018, the Claimant is asserting that he was medically able to work from that date forward. He told the Commission he looked for new employment while he waited for the workplace investigation to end. This evidence shows he believed he was medically able to work before his employer's workplace investigation ended in February 2019. A reasonable and prudent person in the Claimant's circumstances would have made enquiries about his rights and obligations under the *Employment Insurance Act* during this time.

[20] I find that the Claimant did not do what a reasonable and prudent person in his circumstances should have done to satisfy himself as to his rights and obligations under the *Employment Insurance Act*. I therefore find that the Claimant did not have had good cause for the delay in making his claim throughout the entire period from August 5, 2018, the date to which he requested antedating, until March 8, 2019, when he filed his claim.

⁶*Rodger v. Canada (Attorney General)*, 2013 FCA 222 explains this principle.

⁷*Canada (Attorney General) v. Kaler*, 2011 FCA 266 explains this principle.

⁸*Hamilton v Canada (Attorney General)*, A-175-87 interprets the *Employment Insurance Act* to prohibit the Tribunal from dealing with an issue unless it was the subject of a reconsideration decision.

⁹*Granger v. Canada Employment and Immigration Commission*, A-684-85 explains this principle.

CONCLUSION

[21] The appeal is dismissed.

Christopher Pike
Member, General Division - Employment Insurance Section

HEARD ON:	July 23, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. L., Appellant