



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *E. S. v Canada Employment Insurance Commission*, 2019 SST 854

Tribunal File Number: GE-19-2456

BETWEEN:

**E. S.**

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: Christianna Scott

HEARD ON: July 17, 2019

DATE OF DECISION: July 25, 2019

## **DECISION**

[1] The appeal is allowed. E. S. (the Claimant) had shown good cause for the delay in making her claim for compassionate care benefits.

## **OVERVIEW**

[2] The Claimant was receiving regular employment insurance benefits. In late July 2017, the Claimant learned that her grandfather in Egypt was hospitalized because he was gravely ill. The Claimant was required to care for him. The Claimant went to a Service Canada office to explain her situation and to seek advice. She was told to stop making her claims for benefits for the duration of her absence. She then left for Egypt. When the Claimant returned to Canada, she went back to the Service Canada office to seek further advice on her claim for benefits.

[3] In February 2019, the Claimant learned about compassionate care benefits through another Service Canada agent. She made a claim for these benefits on February 7, 2019. She is now asking that her claim be treated as if it was made earlier, on August 1, 2017. The Commission refused this request because it decided that the Claimant did not have good cause for the delay.<sup>1</sup>

[4] I must decide whether the Claimant has proven that she had good cause when she delayed making her claim for compassionate care benefits. The Commission says that the Claimant does not have good cause because the Claimant's ignorance of the law led to the delay. The Claimant disagrees and says that the Commission misinformed her of her rights.

[5] I find that the Claimant had good cause for the delay as she acted like a reasonable and prudent person in the circumstances.

## **PRELIMINARY ISSUES**

[6] The reconsideration decision that was appealed denied the Claimant's request to antedate claims for compassionate care benefits. However, the Commission's reconsideration decision

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<sup>1</sup> Although the Commission's initial decision considered the period of the delay to be from July 30, 2017, to February 2, 2019, the reconsideration decision identified the period of the delay to be from August 4, 2017, until October 6, 2017.

deals only with the topic of whether the Claimant had good cause for the delay in filing her request and does not examine the topic of whether the Claimant qualified for benefits at the earlier date that she is requesting. Consequently, I find that my jurisdiction is limited to the subject of good cause as there is no evidence that the Commission made a decision on whether the Claimant met all of the criteria to qualify for compassionate care benefits on August 1, 2017.

## **ISSUES**

[7] Did the Claimant show good cause throughout the entire period of delay between August 4, 2017, and October 6, 2017?

## **ANALYSIS**

[8] When a claimant misses a deadline for making a claim for benefits or a renewal claim and then asks that a claim be treated as having been made on time, the issue of antedating (backdating) arises. Claimants are required to act diligently in making a claim for unemployment benefits. A claim for benefits in a given week of unemployment that falls during a benefit period must be made within three weeks after the week for which benefits are claimed.<sup>2</sup>

[9] If a claimant delays in making a claim for benefits, the claim will be considered to have been made on an earlier date only if the claimant shows that she had good cause throughout the entire period of the delay.<sup>3</sup> When good cause is proven, the claimant is put into the position she would have been had the delay not occurred.<sup>4</sup>

[10] I must decide if good cause exists by looking at a claimant's specific circumstances.

### **Issue 1: Did the Claimant show good cause throughout the entire period of delay between August 4, 2017, and October 6, 2017?**

[11] I find that the Claimant had good cause for the delay between the period from August 4, 2017, and October 6, 2017.

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<sup>2</sup> Subsection 26(2) of the *Employment Insurance Regulations*.

<sup>3</sup> Paragraph 10(5) of the *Employment Insurance Act*.

<sup>4</sup> *Canada (Attorney General) v. Persiiantsev*, 2010 FCA 101; *Canada (Attorney General) v. Kokavec*, 2008 FCA 307.

[12] To show good cause, the Claimant has to prove that she acted like a reasonable and prudent person would have in similar circumstances.<sup>5</sup> The Claimant has to show this for the entire period of the delay.<sup>6</sup>

[13] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.<sup>7</sup> If the Claimant did not take these steps, then she must show that there were exceptional circumstances that explain why she did not do it.<sup>8</sup>

[14] The Claimant has to prove that it is more likely than not<sup>9</sup> that she had good cause.

[15] The Claimant testified that between April 2017 and July 2017 she was receiving regular employment insurance benefits. She learned that her grandfather was gravely ill in the hospital in Egypt. She was required to return to Egypt to take care of him. The Claimant testified that it was not a planned trip but rather an emergency. The Claimant testified that before travelling she was worried about her employment insurance status. She went to her closest Service Canada office to speak with an agent to see what she was required to do because she would be out of the country. The Claimant testified that she told the agent that she was receiving employment insurance benefits but that she was required to leave the country urgently to take care of a sick family member. The agent informed her that she should simply stop filing her bi-weekly reports during the time that she was out of the country.

[16] The Claimant testified that while she was away, she attempted again to contact Service Canada to double-check the information that she had received. However, she had forgotten her PIN and she had trouble reaching Service Canada from an overseas phone line.

[17] The Claimant testified that upon her return to Canada she went back to the same Service Canada office at the end of September 2017. Once again, she informed an agent that she had left the country to take care of a sick family member. She told the agent that she was now back and

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<sup>5</sup> *Canada (Attorney General) v Burke*, 2012 FCA 139; *Canada (Attorney General) v Carry*, 2005 FCA 36.

<sup>6</sup> *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>7</sup> *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>8</sup> *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>9</sup> The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

asked what she needed to do to regularize her situation with employment insurance. The Claimant was told to resume her bi-weekly reports.

[18] The Claimant testified that neither of the Service Canada agents that she spoke with informed her of the possibility of making a request for compassionate care benefits. It was only in February 2019, that the Claimant learned from another Service Canada agent that she may have been eligible for compassionate care benefits while she was away caring for her grandfather. When the Claimant learned of the possibility of making a claim for compassionate care benefits, she made her claim and asked that the claim be antedated.

[19] The Claimant further testified that she made the claim for compassionate care benefits because the gap in employment insurance benefits between August 2017 and the beginning of October 2017 has had an impact upon a subsequent claim for maternity benefits that the Claimant made with the Québec Parental Insurance Plan (QPIP).

[20] The Claimant says that she has good cause because the delay in her claim is due to misinformation that she received from the two Service Canada agents that she consulted.

[21] The Commission says that the Claimant does not have good cause because the delay is attributable to the Claimant's ignorance of the law. Because the Claimant did not know about compassionate care benefits, she did not inquire with the Commission specifically about this type of benefit and therefore did not make her claim in a timely manner.

[22] I find that the Claimant acted like a reasonable and prudent person would have in similar circumstances. I accept the Claimant's testimony that she provided a description of her situation prior to leaving for Egypt and made general inquiries about what to do in her situation. The Claimant was forthright in her testimony and answered the questions openly. I found her answers credible and I am convinced that she provided sufficient information about her circumstances that her delay in seeking compassionate care benefits is because of her reliance on the information she received from the two Service Canada agents.

[23] I accept the Claimant's testimony that she went in person to a Service Canada office on two occasions during the relevant period. I find that the Claimant inquired about her rights and obligations under the law. She sought guidance from the agents who are mandated to provide

information and assistance to claimants. Moreover, I find that the description provided by the Claimant to the agents was sufficiently detailed that it would be an unduly restrictive interpretation of the situation to conclude that her inquiry related only to her rights and obligations in relation to her claim for regular benefits. Consequently, I am satisfied that the Claimant was seeking overall guidance on how to proceed in her situation. I also find that the Claimant's explanation to the agents contained enough elements that pointed towards the Claimant's potential eligibility for compassionate care benefits. When the only solution offered by the agents to address her situation was to suspend her claim for regular benefits, the Claimant relied upon this information and believed that she had exhausted all options available to her. The agents' omission to inform the Claimant of compassionate care benefits constituted a misrepresentation of her rights under the Act.<sup>10</sup> To conclude otherwise would result in stripping the Commission of their mandate to inform claimant of potential avenues to explore and various programs that are available. I note that under the Service Canada's responsibilities, it states that, "When you request EI benefits, we [Service Canada] aim to [...] advise you of the programs and services available to you;".

[24] I find that the Commission's argument that the delay was attributable solely to the Claimant's ignorance of the law is too restrictive and overlooks the fact that the Claimant took steps to understand her rights and obligations under the Act and explained her situation to the Service Canada agents. Her request for information went beyond simply asking what to do when a claimant is absent from the country.

[25] The evidence supports that the Claimant took reasonably prompt steps to understand her entitlement to benefits and obligations under the law and was given incomplete information that accounted for the entire period of the delay.<sup>11</sup> I find that the Claimant was diligent in her inquiries for information because she made the inquiries right before and right after leaving for Egypt.

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<sup>10</sup> *Pirotte v Canada (Attorney General)*, A-108-76.

<sup>11</sup> The present situation is distinguishable from *Canada (Attorney General) v Labrecque*, A-690 -94 and *Canada (Attorney General) v Chalk*, 2010 FCA 243, because in those two decisions, the misinformation from the Commission did not account for the entire period of the delay.

[26] Moreover, the nature of the benefits in question (compassionate care benefits) further supports my finding that good cause existed. The courts have recognized that a slightly more lenient approach is applicable when the claim is one for special benefits [compassionate care benefits] as claimants are not required to prove availability for work. As such, administrative difficulties associated with establishing whether a claimant was available for work during the period of the delay are not factored into assessing whether the claimant had good cause for the delay.<sup>12</sup>

[27] Consequently, I find that the Claimant had good cause for the delay.

### CONCLUSION

[28] The appeal is allowed.

Christianna Scott  
Member, General Division - Employment Insurance Section

HEARD ON:	July 17, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. S., Appellant

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<sup>12</sup> *De Jesus v Canada (Attorney General)*, 2013 FCA 264.