



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. S. v Canada Employment Insurance Commission*, 2019 SST 1487

Tribunal File Number: GE-19-2397

BETWEEN:

M. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Suzanne Graves

HEARD ON: August 1, 2019

DATE OF DECISION: August 6, 2019

DECISION

[1] I am allowing the appeal in part. The Claimant did not show good cause for the entire period of delay in applying for benefits. This means that her application cannot be backdated to November 25, 2018.

[2] The Claimant has shown good cause for the last part of the delay from April 3, 2019, to May 3, 2019. This means that the Claimant's application can be backdated to April 3, 2019.

OVERVIEW

[3] The Claimant worked for a hotel as a phone system operator for about 28 years. Her employer decided to renovate the hotel and laid her off. She applied for employment insurance (EI) benefits on March 4, 2018. The Commission allocated the Claimant's severance pay and told her she could reapply for benefits on November 25, 2018. She waited until April 3, 2019, to call the Commission to ask about her benefits. On April 9, 2019, she asked to backdate her claim to November 25, 2018. She made a renewal application on May 3, 2019. She asks that her application be treated as if it was made earlier, on November 25, 2018. The Commission has already refused this request.

[4] I must decide whether the Claimant proved she had good cause when she delayed making a claim for benefits from November 25, 2018, to May 3, 2019. The Commission says the Claimant does not have good cause for the delay because she took no steps to enquire about her rights and obligations. The Claimant disagrees and says that she expected to receive benefits starting on November 25, 2018. When she heard nothing, she waited and later asked her former co-workers for advice. They told her to follow up with the Commission.

[5] As soon as the Claimant realized her mistake, she called the Commission on April 3, 2019, and took steps to renew her claim.

ISSUE

[6] I must decide whether the Claimant's application for benefits can be treated as if it was made on November 25, 2018. This is called antedating the application.

ANALYSIS

[7] Claimants have to prove two things to have an application for benefits antedated:

1. They had good cause for the delay during the whole period of the delay.
2. They qualified for benefits on the earlier day.¹

[8] The parties agree that the Claimant qualified to receive benefits on November 25, 2018. The only issue before me is whether the Claimant showed that she had good cause to apply late for benefits.

[9] To show good cause, the Claimant has to prove that she acted like a reasonable and prudent person would have done in similar circumstances.² The Claimant has to show this for the entire period of the delay.³ In some cases, a claimant can show they had good cause for part of the delay, but only if that part was immediately before they made their claim for benefits.⁴ The Claimant has to prove that it is more likely than not⁵ that she had good cause.

[10] The Claimant has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁶ If the Claimant did not take these steps, she must show that there were exceptional circumstances that explain why she did not do it.⁷ For the Claimant, the period of delay is from November 25, 2018, to May 3, 2019.

[11] The Claimant says that she has never claimed EI benefits in the past and did not know the rules of the system. She got a letter from the Commission that she thought meant her benefits would start on November 25, 2018. When she received no benefits, she waited patiently for about four months to hear from the Commission. She then talked to her former colleagues, who suggested that she call the Commission right away.

¹ S 10(5) of the *Employment Insurance Act*.

² *Canada (Attorney General) v Burke*, 2012 FCA 139.

³ *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁴ CUBs 10992, 16584, 72356. I do not have to follow CUB decisions but I am guided by their reasoning on this issue. In CUB 16584, the former umpire noted that good cause could justify a portion of the delay, only if the part in question immediately preceded the claim.

⁵ The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

⁶ *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

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

[12] She testified that she first contacted the Commission on April 3, 2019. An agent sent her an access code by regular mail. She received the access code and called the Commission again on April 9, 2019. After that, she called multiple times to speak with the Commission to make her renewal claim. She recorded the names of each agent she spoke with, and showed me notes of their conversations. On May 3, 2019, she finally spoke with an agent who offered to help her make a renewal claim over the phone.

[13] The Commission says that that the Claimant did not show good cause for the entire period of the delay because she did not follow up to enquire about her rights and obligations. She therefore did not act like a reasonable person would have done in similar circumstances. The Commission's file shows that the Claimant spoke with an agent on April 9, 2019, and asked to antedate her claim to November 25, 2018. She told the agent that she needed help with her reports since she does not do well with computers.⁸

[14] I find that the Claimant did not show good cause for the entire period of the delay in applying for benefits, because she waited more than four months, until April 3, 2019, to contact the Commission to ask about her benefits. I find that a reasonable person would have followed up within a few weeks of the date she expected her benefits to start.

[15] I appreciate that the Claimant has never claimed benefits in the past and did not know the EI rules. However, ignorance of the law is not sufficient reason to antedate her claim. If she did not understand the EI system, she could have called the Commission, or gone to a Service Canada office to ask for advice.

[16] I asked the Claimant whether any exceptional circumstances prevented her from contacting the Commission for over four months. She testified that a family member had some health issues during this time, but said that this did not stop her from following up. She said that she simply misunderstood the Commission's instructions and was patiently waiting to receive benefits. I accept the Claimant's evidence that she delayed taking action because she was waiting to hear from the Commission.

⁸ The Commission recorded this discussion with the Claimant and it is in the Tribunal file at GD3-17.

[17] I find that the Claimant did not prove that she had good cause for the delay in applying for benefits throughout the entire period of the delay, starting on November 25, 2018.

[18] However, I can consider a different date than the one asked for by the Claimant, if there is a reasonable basis to do so. Where a claimant shows good cause for part of the delay that is immediately before their claim, I can backdate the application to that limited extent.⁹

[19] I accept the Claimant's evidence that she called the Commission on April 3, 2019, and find that she took reasonably prompt steps after that date to file her renewal claim. She testified in a forthright and credible manner, and her testimony is consistent with statements she made to the Commission.

[20] This period of good cause was immediately before the renewal application she made on May 3, 2019. I therefore find that the Claimant's application should be backdated to April 3, 2019.

CONCLUSION

[21] The appeal is allowed in part. The Claimant's application can be treated as though it was made on April 3, 2019.

Suzanne Graves

Member, General Division - Employment Insurance Section

HEARD ON:	August 1, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	M. S., Appellant

⁹ CUBs 4176, 4911, 10992, 6349. I do not have to follow CUB decisions but I find their reasoning persuasive on this issue. In CUB 4176, the umpire stated that the former board of referees (which used to make EI decisions) could select a different date to the one requested, as long as there is some factual or evidential basis for that date.