Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *CB v Canada Employment Insurance Commission*, 2019 SST 1696

Tribunal File Number: GE-19-3187

BETWEEN:

**C. B.**

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: Yoan Marier

HEARD ON: September 26, 2019

DATE OF DECISION: September 30, 2019

Canada

## DECISION

[1] The claim cannot be antedated, since the Appellant has not shown that she had good cause for the delay in filing her claim for benefits. As a result, the Appellant is not entitled to Employment Insurance benefits. The appeal is dismissed for the following reasons.

## OVERVIEW

[2] The Appellant, C. B., stopped working for her employer on April 30, 2019. She waited until July 16, 2019, to apply for Employment Insurance benefits.

[3] The Canada Employment Insurance Commission reviewed the claim for benefits. It determined that the Appellant did not have good cause for the delay in making her claim. The Commission therefore refused to "antedate"[1] the claim to the date she stopped working. As a result, the Appellant was unable to access Employment Insurance benefits.

[4] The Appellant is now challenging the Commission's decision. She submits that she was unable to make her claim on time because she was waiting for her Record of Employment from her employer. She did not know that she could apply for benefits without this document.

## ISSUE

[5] Can the claim for benefits filed on July 16, 2019, be antedated to April 30, 2019?

## ANALYSIS

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

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[1] This word is used in Employment Insurance jargon. A claim is "antedated" when it is considered to have been filed on an earlier date.
[2] *Canada (AG) v Brace*, 2008 FCA 118.

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

a) The claimant qualified to receive benefits on an earlier date.[4]

b) The claimant had good cause for the delay throughout the entire 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 met the basic requirements for receiving benefits when she stopped working on April 30, 2019.

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

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

[12] The Appellant stopped working on April 30, 2019, after her contract with the Sûreté du Québec [Quebec's provincial police] ended. She filed her claim for benefits on July 16, 2019, that is, more than two and a half months after she stopped working.

[13] Because of this delay, the Appellant did not have access to Employment Insurance benefits, since she no longer had enough hours of insurable employment in her qualifying period[7] to qualify. By applying on July 16, the Appellant ended up with only 643 hours of insurable employment when she needed at least 700.[8]

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[3] Section 10(4) of the *Employment Insurance Act*.
[4] This date generally corresponds to when the claimant should have filed their claim (that is, when earnings stopped).
[5] *Canada (AG) v Scott*, 2008 FCA 145.
[6] This is the interpretation of "good cause" used by the Federal Court of Appeal. See, for example, *Canada (AG) v Burke*, 2012 FCA 139.
[7] July 15, 2018, to July 13, 2019
[8] GD3-27, GD3-33, and section 7 of the *Employment Insurance Act*.

[14] To explain her delay in filing her claim for benefits, the Appellant submits that her employer was very slow to issue the Record of Employment because it took a while for the payroll department to get the information on her separation from employment. This delay was made worse by updates to the payroll computer system that made the system inoperable. The Appellant submits that, meanwhile, she did not know that she could apply for benefits without her Record of Employment. However, she submitted her claim as soon as she learned, through a co-worker, that it was possible.

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

[16] There is no requirement in the Act or the Regulations that claimants must have their Records of Employment when they apply for benefits. The Record of Employment does contain essential information, but it can be provided to the Commission after the claim for benefits is made, without any problems.

[17] The Federal Court of Appeal has heard many similar cases. It has consistently found that waiting for a Record of Employment from an employer is not good cause for delaying a claim for benefits.[9]

[18] More generally, it is also well established that ignorance of the law, even if coupled with good faith, is not enough to establish good cause.[10]

[19] If she was unsure, it was up to the Appellant 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] People who want to receive benefits are required 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.[11] I find that the reasons given by the Appellant do not constitute special circumstances.

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[9] *Canada (AG) v Brace*, 2008 FCA 118; *Canada (AG) v Ouimet*, 2010 FCA 83.
[10] *Canada (AG) v Kaler*, 2011 FCA 266; *Canada (AG) v Somwaru*, 2010 FCA 336.
[11] *Attorney General of Canada v Caron*, A-395-85.

[21] While I do not at all doubt the Appellant's good faith in this case, I am forced to find that the Appellant did not act as a reasonable and prudent person would have acted 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 for benefits as soon as possible.

**CONCLUSION**

[22] The claim for benefits cannot be antedated. As a result, the Appellant does not have enough hours of insurable employment in her qualifying period to qualify for benefits. The appeal is dismissed.

Yoan Marier
Member, General Division – Employment Insurance Section

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| HEARD ON: | September 26, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCE: | C. B., Appellant |