



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v Canada Employment Insurance Commission*, 2019 SST 998

Tribunal File Number: AD-19-614

BETWEEN:

R. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Decision by: Shirley Netten

Date of Decision: October 9, 2019

DECISION AND REASONS

DECISION

[1] The Application for leave to appeal is granted, and the appeal is allowed. The General Division decision is varied in part, to provide that the Claimant was entitled to receive benefits for the weeks of December 16 to 22, 2018 and December 23 to 29, 2018.

BACKGROUND

[2] R. B., the Claimant, was receiving regular employment insurance benefits in the fall of 2018. However, he did not file his reports (claims for benefits) beginning with the week of November 11, 2018, until he tried to do so on December 28, 2018. The Commission told him that it would not pay his benefits between November 12 and December 28, 2018, because the reports hadn't been completed on time and he had not shown good cause for being late. The Commission did resume paying the Claimant his benefits starting with the week of December 30, 2018.

[3] The Claimant appealed to the Social Security Tribunal's General Division. The General Division dismissed the Claimant's appeal because he had not proven good cause for the delay, which meant that his reports could not be backdated to November 12, 2018. The Claimant then requested leave to appeal to the Appeal Division.

AGREEMENT

[4] A settlement conference was held in this matter, under section 17 of the *Social Security Tribunal Regulations*. The parties agree that the Claimant's application for leave to appeal should be granted and that his appeal should be allowed on the basis that the General Division erred by not considering the application of s. 26(2) of the *Employment Insurance Regulations* (Regulations). The Claimant accepts that he was not entitled to backdating of his reports to November 12, 2018. The parties agree that the correct application of the law leads to the Claimant's entitlement to benefits beginning on December 16, 2018.

[5] I accept this agreement because the outcome is consistent with the evidence and with the law. The General Division made an error of law¹ by focusing on the question of whether the Claimant had good cause for not filing his reports and failing to recognize that s. 26(2) of the Regulations allowed for the payment of benefits for part of the period under appeal. Where there has been an error, one of the remedies available to the Appeal Division is to vary the General Division decision in whole or in part.²

[6] The Regulations say that a claim for benefits for a week of unemployment has to be made within three weeks (s. 26(1)). However, if a claim hasn't been filed for at least four weeks then the next claim has to be made within one week after the week for which benefits are claimed (s. 26(2)). In this appeal, more than four weeks passed before the Claimant tried to file his next claim, on December 28, 2018. Under s. 26(2) of the Regulations, he was entitled to benefits starting the previous week (the week of December 16 to 22, 2018).

[7] Moreover, the Claimant was not disentitled for failing to comply with the requirement of making his claim within the prescribed time.³ This is because there is no requirement to make a claim for benefits during every week of the benefit period. Rather, as s. 26(2) of the Regulations makes clear, a claim for benefits can be made after an extended period without making a claim.

CONCLUSION

[8] The Application for leave to appeal is granted, and the appeal is allowed. The General Division decision is varied in part, to provide that the Claimant was entitled to receive benefits for the weeks of December 16 to 22, 2018 and December 23 to 29, 2018.

Shirley Netten
Member, Appeal Division

REPRESENTATIVES:	M. C., for the Applicant
	I. Thiffault, for the Respondent

¹ This is one of the permitted grounds of appeal to the Appeal Division, found in s. 58(1)(b) of the *Department of Employment and Social Development Act* (DESDA)

² See s. 59(1) of the DESDA

³ Under s. 50(1) of the *Employment Insurance Act*, as the General Division had stated