



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v Canada Employment Insurance Commission*, 2019 SST 1417

Tribunal File Number: GE-19-3327

BETWEEN:

R. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: October 10, 2019

DATE OF DECISION: October 17, 2019

DECISION

[1] The appeal is dismissed. The Claimant has not shown that he had an interruption in earnings on June 30, 2018, because he continued working even though he was not being paid. This means the Claimant does not qualify for employment insurance benefits on June 30, 2018, and his request to antedate his claim to that date must be dismissed.

OVERVIEW

[2] The Claimant applied for employment insurance (EI) benefits on June 18, 2019. He is now asking that the application be treated as if it was made earlier, on June 30, 2018. The Canada Employment Insurance Commission (Commission) has already refused this request.

[3] I must decide whether the Claimant has proven that he would have qualified for EI benefits on June 30, 2018, and whether he had good cause when he delayed between June 30, 2018, and June 18, 2019, in making his application for EI benefits. The Commission says that the Claimant does not have good cause because he did not contact the Commission to get information about his rights and obligations under the law, which means he did not act as a reasonable person in his circumstances would have done.

[4] The Claimant disagrees and says that he acted as a reasonable person because he believed he was still employed and thought he was going to be paid throughout the entire period of the delay. He submits that he made a claim for EI benefits as soon as he learned that he would not be paid by his employer.

[5] I find that the Claimant cannot be paid EI benefits on the earlier date, being June 30, 2018. While the Claimant was not paid after June 30, 2018, he continued working on the expectation that he would be paid. This means he did not experience an interruption in earnings, because an interruption requires that the Claimant stop working. Without an interruption in earnings, the Claimant does not qualify for EI benefits.

PRELIMINARY MATTERS

[6] The Commission's submission did not address whether it thought the Claimant qualified for EI benefits on the earlier date. On October 10, 2019, I asked the Commission to provide further

submissions regarding its position on whether the Claimant would have qualified for EI benefits on June 30, 2019. The Commission filed Additional Representations on October 17, 2019, in response to my request.

[7] The Claimant submitted a post-hearing document on October 10, 2019, providing evidence that he was promised a pre-loaded MasterCard and investment income by his employer in March 2019. The Claimant also submitted a June 16, 2019, email from the president of the employer's parent company, stating the Claimant was in violation of the investment agreement and would have his investment cancelled. I accepted these documents as they are likely relevant to the appeal. Further, I find there is no prejudice to the Commission if I accept and consider these additional documents.

ISSUE

[8] I must decide whether the Claimant's application for EI benefits can be treated as if it was made on June 30, 2018 (this is called antedating the application).

ANALYSIS

[9] 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

[10] To show good cause, the Claimant has to prove that he acted like a reasonable and prudent person would have in similar circumstances.² The Claimant has to show this for the entire period of the delay,³ which is from June 30, 2018, to June 18, 2019. He must also show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁴

¹ *Employment Insurance Act*, subsection 10(4).

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

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

⁴ *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

If the Claimant did not take these steps, then he must show that there were exceptional circumstances that explain why he did not do it.⁵

[11] To prove that he qualified for benefits on the earlier date, being June 30, 2018, the Claimant has to prove that he meets the criteria under the law. These include that he had an interruption in earnings, and had enough hours of insurable employment in his qualifying period to establish a benefit period.⁶

The Claimant did not qualify for EI benefits on June 30, 2018

[12] I find the Claimant did not qualify for EI benefits on June 30, 2018. While the Claimant had sufficient hours of insurable employment to establish a claim, he does not qualify because he did not experience an interruption in earnings until June 18, 2019. Due to this, his claim cannot be antedated to June 30, 2018.

[13] To antedate a claim, the Claimant has to qualify for EI benefits on the earlier date requested. Benefits are only payable to persons who qualify.⁷ To show he qualifies, part of what the Claimant must prove is that there has been an interruption in earnings from employment.⁸

[14] An interruption in earnings does not mean that the Claimant experienced only an interruption in being paid, but means he must have experienced a layoff or separation from his employment and had a period of seven or more consecutive days where no work was performed for that employer.⁹

[15] The Claimant testified that he continued working for the employer throughout the period of delay, from June 30, 2018, until June 18, 2019, because he believed he would be paid. He added that it was not until he received an email from his employer's parent company in June 2019, that he realized he was not going to be paid. He made a claim for EI benefits as soon as this occurred, which he characterized as the date he was fired.

⁵ *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁶ *Employment Insurance Act*, subsection 7(2).

⁷ *Employment Insurance Act*, subsection 7(1).

⁸ *Employment Insurance Act*, subsection 7(2).

⁹ *Employment Insurance Regulations*, subsection 14(1).

[16] I must consider the unpaid nature of the work between June 30, 2018, and June 18, 2019. One of the main questions to consider is whether the work in this period was truly unpaid, meaning I must assess whether the Claimant expected to receive any financial remuneration from it.¹⁰ Newer law from the Federal Court of Appeal has more precisely explained that I must consider whether the Claimant, “expected to derive any financial benefit”¹¹ from the period of unpaid work.

[17] The Claimant’s evidence supports a finding that he continued to be employed after the employer stopped paying him in June 2018, and did not experience an interruption in earnings until June 2019, when he stopped working. While the Claimant was not being paid from June 30, 2018, onwards, he testified that he continued to work and expected that he would be paid. I find the Claimant expected to derive a financial benefit from the period of unpaid work. Given that the Claimant continued to perform work for approximately one year after the employer stopped paying him and expected to receive money for that unpaid work, I find he was employed from June 30, 2018, until June 18, 2019.

[18] This continuation of employment, even if unpaid, means the Claimant did not experience an interruption in earnings as defined by the *Employment Insurance Regulations*. For these reasons, the Claimant does not qualify to have his claim antedated to June 18, 2018.

The Claimant showed good cause for the entire period of the delay

[19] While the Claimant’s claim for EI benefits cannot be antedated to June 30, 2018, because he did not qualify for EI benefits on that date, I find that he did show good cause for the entire period of the delay. The Claimant was dealing with a garnishment order and followed his employer’s advice on addressing the garnishment, and in March 2019, was promised that part of his compensation package would be fulfilled within six to eight weeks.

[20] I find the Claimant did not know until June 2019, that he was not going to be paid by his employer for the hours and commissions he earned from June 30, 2018, until June 18, 2019. This means he showed good cause for the delay in making a claim for EI benefits, because he continued working and thought he was still employed until June 18, 2019. Since he did not believe he was

¹⁰ *Berube v. Employment and Immigration Canada*, A-986-88.

¹¹ *Canada (Attorney General) v. Greey*, 2009 FCA 296.

unemployed, he had no reason to investigate his rights and obligations in making a claim for EI benefits.

CONCLUSION

[21] The appeal is dismissed.

Candace R. Salmon

Member, General Division - Employment Insurance Section

HEARD ON:	October 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. B., Appellant