



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Y. Y. v Canada Employment Insurance Commission*, 2019 SST 1298

Tribunal File Number: AD-19-299

BETWEEN:

Y. Y.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: October 31, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed and the matter referred to a different member of the General Division for a redetermination.

OVERVIEW

[2] The Appellant, Y. Y. (Claimant), is appealing the General Division's decision dated March 22, 2019. The General Division decided that the Claimant did not have good cause for filing his online reports for Employment Insurance benefits late, so it did not allow him to antedate his claim as if he had filed his reports on an earlier date.

[3] The Claimant argues that he did not get a chance to properly present his case because the Respondent, the Canada Employment Insurance Commission (Commission) had failed to produce relevant documents. He argues that if the General Division had all of the relevant documents, it would have come to a different decision and would have antedated his late reports.

[4] For the reasons that follow, I am allowing the appeal.

ISSUE

[5] Did the Claimant get a chance to properly present his case at the General Division?

ANALYSIS

[6] The Claimant applied for Employment Insurance benefits in both 2017 and 2018. In both years, he failed to file biweekly reports on time. For his 2018 claim, he argued that he should be entitled to antedate his reports, in part, because he had been able to antedate his reports in 2017, when he was also late in filing reports. However, the General Division rejected this argument.

[7] The General Division hearing file did not include a copy of the Claimant's 2017 Employment Insurance file. The Claimant argues that he needed his 2017 Employment Insurance file to prove his case for an antedate in 2018. He argues that the Commission ignored his requests for a copy of his 2017 Employment Insurance file. He argues that the 2017 file would

have not only shown that the Commission had antedated his biweekly reports then, but that no one had ever informed him about the Employment Insurance process or advised him that he was required to file biweekly reports on time. He claims that if the General Division had had a copy of the 2017 file, it would have concluded that he had good cause file for filing his 2018 reports late.

[8] Instead, the General Division wrote, “Without further evidence of what really happened in 2017, I grant very little weight to the [Claimant’s] experience as an explanation or justification of his delay in 2018.”¹ The General Division concluded that the Claimant did not prove good cause for his delay in filing biweekly reports.

[9] In the course of this appeal, the Commission agreed that the documents that the Claimant had requested “should have been included in the file submitted to the General Division, since the Commission’s Representations referred to events that occurred during his previous claim as part of the basis for its decision.”² The Commission then produced a copy of the 2017 Employment Insurance file.³

[10] After reviewing the 2017 Employment Insurance file, the Claimant confirms that he needed the file to help him prove that he had good cause for filing his 2018 biweekly reports late. That being so, I find that the Claimant could not have had a fair chance to properly present his case at the Appeal Division when the Commission did not produce a copy of the 2017 Employment Insurance file.

[11] To be clear, this is not to suggest that the General Division failed to observe a principle of natural justice under subsection 58(1) of the *Department of Employment and Social Development Act*. After all, it appears that the General Division was unaware of the Claimant’s request for production of the 2017 Employment Insurance file. Nevertheless, the Claimant is entitled to production of all relevant documents for his appeal so that he can properly present his case.

¹ See General Division decision at para. 14.

² See Commission’s correspondence dated August 1, 2019, to the Appeal Division, at AD4-1.

³ See 2017 Employment Insurance file, at AD5-1 to AD5-24.

REMEDY

[12] Having determined that the Claimant did not have the chance to properly present his case at the General Division, I have to decide the appropriate remedy. The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions or confirm, rescind or vary the decision of the General Division in whole or in part.⁴

[13] On the one hand, the Claimant argues that the 2017 Employment Insurance file proves that the Commission advised him that he had to file only one Employment Insurance report ever, so I should find that he had good cause and antedate his 2018 report.

[14] On the other hand, the Commission denies that the 2017 Employment Insurance file shows that any of its agents had ever advised him that he had to file only one report. The Commission argues that it advised the Claimant that he had an ongoing duty to file reports within three weeks of the due date, for as long as his claim remained active, otherwise he could face a loss of benefits. This advice appeared at the end of the Claimant's Employment Insurance report for the period from May 6 to May 19, 2018.⁵ The Commission argues that, given the advice it gave to the Claimant, he could not reasonably rely on the 2017 antedating. In short, the Commission argues that I should dismiss the appeal.

[15] I asked the Claimant about the advice that appeared at the end of his Employment Insurance report for May 6 to 19, 2018. The advice says that it was important for him to file his reports within three weeks of the due date. Clearly, this advice seems to undermine the Claimant's argument that he had good cause to file 2018 reports after three weeks had passed.

[16] The Claimant responded that, "he didn't pay attention to that thing, that kind of thing."⁶ However, the Claimant insists that, even if he had noticed this advice, he could still rely on the 2017 antedating. He argues that the 2017 Employment Insurance file still proves that he was

⁴ See subsection 59(1) of the *Department of Employment and Social Development Act*.

⁵ See Employment Insurance report for period from May 6 to May 19 2018, at GD3-22.

⁶ Claimant's response at approximately 1:06 to 1:06:44 of the Appeal Division hearing on October 16, 2019.

justified in thinking that he did not have to file any ongoing reports after his initial report or in thinking that he could file any reports late.

[17] Because this new evidence that the Commission should have produced early on has not been tested and has not been subjected to any scrutiny, I find that it is appropriate to return the matter to the General Division for a redetermination. The General Division serves as the trier of fact and it has yet had the opportunity to assess this evidence and the credibility of the Claimant's claims. The Claimant maintains that the 2017 file proves that he was justified in thinking that he only had to file an initial Employment Insurance report and that he therefore had good cause for filing his 2018 reports late. Depriving the Claimant of the opportunity to explore the 2017 file as good cause would otherwise put the administration of justice into disrepute.

CONCLUSION

[18] I am allowing the appeal and referring the matter to a different member of the General Division for a redetermination.

Janet Lew
Member, Appeal Division

HEARD ON:	October 16, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	Y. Y., Appellant Melanie Allen and Josee Lachance, Representatives for the Respondent (by teleconference)