



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. N. v Canada Employment Insurance Commission*, 2019 SST 1594

Tribunal File Number: GE-19-3421

BETWEEN:

P. N.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

HEARD ON: November 6, 2019

DATE OF DECISION: November 12, 2019

DECISION

[1] The appeal is dismissed. The Claimant asks for an antedate, or backdating, of the filing of her benefit claim forms with the Commission, but she has not shown good cause for the delay in filing her claim reports.

OVERVIEW

[2] The Claimant made an initial application for benefits on October 1, 2018 after leaving her employment. The law says that she must file biweekly online reports with the Commission in a timely manner to get benefits.

[3] She admits that she did not file reports for the weeks beginning September 30, 2018 to November 3, 2018 until April 2019, which is about 6 months late.

[4] She says she wants backdating of the filing of her reports because she has shown good cause for the delay. She says that she was new to claiming benefits and she did not know that she needed to file biweekly reports for the period September 30, 2018 to November 3, 2018 until someone told her, in April 2019, to talk to the Commission.

[5] She says that she thought the Commission approved her claim for benefits and she waited for the Commission to talk to her about her claim, but she says they did not contact her. She says that the delay is due to getting wrong advice from others. She says she was told by provincial benefit program people that her employment insurance benefits are approved and she is to wait for the Commission to give her benefits.

[6] The Commission did not allow backdating of the filing of online claim reports for the period September 30, 2018 to November 3, 2018 because she has not shown good cause for the delay of about 6 months.

ISSUE

[7] Should the Claimant be allowed backdating of the filing of her online claim reports for the period September 30, 2018 to November 3, 2018?

ANALYSIS

[8] No; The Claimant is not allowed backdating of the filing of her online claim reports from April 2019 to the week beginning September 30, 2018. She has not shown good cause for delay of about 6 months.

[9] I find that the Claimant has not shown that she did what a reasonable and prudent person would have done in the same situation. She admits that she made no effort to contact the Commission between October 2018 and April 2019 to ask about her claim for benefits and the reason why they have not been paid.

[10] The law says that she must file online claim reports within three weeks after the week for which benefits are claimed (subsection 50(1), *Employment Insurance Act (EI Act)* and subsection 26(1) of the *Employment Insurance Regulations*).

[11] The Claimant admits that there is a delay of about 6 months in filing her online claim reports, but she says that she has shown good cause for the delay.

[12] The antedating or backdating of the filing of online claim reports is allowed if the claimant can show that there was good cause for the delay throughout the entire period (subsection 10(5), *EI Act*).

[13] The obligation and duty to promptly file a claim is seen as very demanding and strict. This is why the “*good cause for delay*” exception is cautiously applied (*Canada (Attorney General) v. Brace*, 2008 FCA 118).

[14] Good cause for delay in filing claim reports must be shown throughout the entire period for which the antedate is required (*Canada (Attorney General) v. Chalk*, 2010 FCA 243). The burden of proof rests on the claimant (*Canada (Attorney General) v. Kaler*, 2011 FCA 266).

[15] To prove good cause for the delay in filing online claim reports, claimants must show that they did what a reasonable and prudent person would have done in the same situation to satisfy themselves as to their rights and obligations under the *EI Act* (*Kamgar v. Canada (Attorney General)*, 2013 FCA 157).

[16] She says that she delayed in filing online claim reports because she was new to claiming benefits and she did not know that she needed to file biweekly reports for the period September 30, 2018 to November 3, 2018 until someone told her, in April 2019, to talk to the Commission.

[17] She went online in October 2018 and thought the Commission approved her claim for benefits and she waited for the Commission to talk to her about her claim or pay her benefits, but she says they did not contact her.

[18] She says she did not ask the Commission questions about her claim for about 6 months because people looking after her provincial benefits said that she was approved for employment insurance benefits. They told her she should wait for the Commission to pay benefits.

[19] She says that after filing her initial online claim she logged into her account and was told that her claim for benefits was approved and she needed to wait to be sent an access code to file her biweekly reports. She says that she did not receive the code, but she delayed trying to reach the Commission to ask about her claim for about 6 months.

[20] I find that the Commission told the Claimant she needed to file biweekly claim reports soon after she applied for benefits.

[21] I find that she was told in her online application that the next step was for the Commission to mail her an access code. I find that she received a letter from the Commission in October 2018 telling her how important it is to file online claim reports. It was not reasonable for her to sit and wait for 6 months before contacting the Commission, even if she was given advice from people in her provincial benefit program to wait.

[22] I am have problems believing some of the Claimant's testimony because she has changed her story from what she told the Commission. I do not find her testimony to be reliable.

[23] She admitted to the Commission in April 2019 that she got a letter from them in October 2018 (GD3-17). She also told them in September 2019, with her request for reconsideration of their denial decision, that she got their letter of October 4, 2019 (GD3-46). In testimony, she now says that she did not get the letter.

[24] I find that she got the October 4, 2018 letter from the Commission and that she knew the importance of filing online claim reports, yet she chose to wait 6 months to contact the Commission. From information filed by the Claimant, she appears to have a good understanding of English.

[25] She told the Commission that she spoke with them in October 2018 and was told that an access code was coming to her by mail to allow her to file claim reports online (GD3-33). In testimony, she now says that she did not speak with the Commission in October 2018 and she was unaware at that time that she needed an access code.

[26] She says she delayed to April 26, 2019 to contact the Commission to ask about her claim because she was new to the employment insurance system and she thought her claim was approved, so she chose to wait for 6 months. I find that a reasonable and prudent person in the Claimant's shoes would not sit and wait for contact from the Commission for 6 months, even if she was told by people looking after her provincial benefits to sit and wait.

[27] She did not contact them after getting their October 4, 2018 letter. Some of the reason for the delay was because of her focus on her new job in November 2018. She testified that she was focusing on post-secondary school studying for the new job. She did not check with the Commission about her claim for about 6 months because it did not cross her mind to do that (GD3-46).

[28] Unless exceptional circumstances exist, a claimant has an obligation to take "*reasonably prompt steps*" to determine entitlement to EI benefits and to ensure his rights and obligations under the Act (*Canada (Attorney General) v. Carry*, 2005 FCA 367; *Canada (Attorney General) v. Somwaru*, 2010 FCA 336).

[29] The Claimant says that she was unaware that she needed to file online claim reports in a timely manner, as the law says. Confusion with the employment insurance program, ignorance of the law and wrong advice from others would be good cause so long as the Claimant was able to show that she had acted as a reasonable and prudent person or showed some exceptional circumstances. This means she would need to show some special things led her to delay filing

her claim reports. (*Canada (Attorney General) v. Beaudin*, 2005 FCA 123; *Shebib v. Canada (Attorney General)*, 2003 FCA 88).

[30] I find that the Claimant has not shown that special things exist as reasons for the delay in filing her reports. She did not act like a reasonable person in her situation would have to check with the Commission about her rights and duties in law (*Somwaru*). A reasonable person would have contacted the Commission to ask about her claim long before 6 months.

[31] Ignorance of employment insurance law does not excuse a delay in filing claims for benefits (*Beaudin*).

[32] I find that the Claimant did not show good cause throughout the entire period of the delay in filing online claim reports from the week beginning September 30, 2018, to April 26, 2019. She has not shown that, more likely than not, she did what a reasonable and prudent person in her circumstances would have done to satisfy herself of her rights and duties.

CONCLUSION

[33] The appeal is dismissed. The Claimant's request to antedate her filing of biweekly reports under subsection 10(5) of the *EI Act* is refused.

Glen Johnson

Member, General Division - Employment Insurance Section

HEARD ON:	November 6, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. N., Appellant