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

Citation: *C. M. v Canada Employment Insurance Commission*, 2019 SST 1486

Tribunal File Number: GE-19-3609

BETWEEN:

C. M.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: November 15, 2019

DATE OF DECISION: November 26, 2019

Canada

DECISION

[1] The appeal is dismissed. The Claimant has not shown she had good cause for the delay in applying for employment insurance (EI) benefits. This means that the Claimant's application for EI benefits cannot be treated as if it was made on April 20, 2019.

OVERVIEW

[2] The Claimant was employed as a temporary instructor in a college. She stopped working on April 19, 2019, when she was not rehired for next semester. She applied for EI benefits on June 24, 2019. She asked that the application be treated as if it was made on April 20, 2019. The Commission has refused this request.

PRELIMINARY MATTERS

[3] The Claimant included with her appeal a Record of Employment (ROE) for a period employment that ended on October 13, 2017. The ROE was issued to her because of a strike or lockout. She did not apply for EI benefits at that time. I explained to the Claimant that I would not be dealing with that period of unemployment because I did not have jurisdiction. For me to have jurisdiction to decide an appeal on the 2017 period of unemployment the Commission must make a decision denying her request to receive EI benefits for that period of unemployment.[1] The courts have confirmed that issue the Tribunal must determine is the decision the Commission made under section 112 of the *Employment Insurance Act*.[2] The Commission has not yet made a decision under section 112 on the Claimant's period of unemployment beginning on October 14, 2017, because the Claimant has yet to apply for EI benefits for that period of unemployment. So I will not be making a decision on the 2017 period of unemployment. Nothing in this decision prevents the Claimant from making an application for EI benefits for the 2017 period of unemployment.

ISSUE

[4] I must decide whether the Claimant's application for EI benefits can be treated as if it had been made on April 20, 2019. This is called antedating the application.

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[1] Sections 113 of the *Employment Insurance Act* says that a party, who is dissatisfied with a decision of the Commission that was made under section 112 of the Act, may appeal that decision to the Tribunal.
[2] *Hamilton v. Canada (Attorney General)*, A-175-87. This is how I refer to the court cases containing principles the law requires me to apply to the circumstances of this appeal

ANALYSIS

[5] Claimants have to prove two things to have an application for benefits antedated: they had good cause for the delay during the whole period of the delay; and, they qualified for benefits on the earlier day.[3]

[6] I will start by deciding whether the Claimant had good cause for the delay since the main arguments before me are about whether there was good cause.

[7] To show good cause, the Claimant has to prove that she acted like a reasonable and prudent person would have in the same circumstances as hers would have acted.[4] The Claimant has to show this for the entire period of the delay.[5] For the Claimant, the period of delay is from April 20, 2019 to June 22, 2019.

[8] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.[6] If the Claimant did not take these steps, then she must show that there were exceptional circumstances that explain why she did not act reasonably quickly to understand what she needed to do to receive EI benefits.[7]

[9] The Claimant has to prove that it is more likely than not[8] that she had good cause.

[10] The Claimant says that she has good cause for the delay because it was an honest mistake for her not to apply for EI benefits earlier. She did not make the mistake deliberately. She said that she is employed in temporary positions as a college instructor. Her employer would let her know at least two weeks ahead of a semester whether she would have work in that semester. She had been working year round for the past 10 years but has never had a full-time permanent job. The Claimant explained that she is hired for one semester at a time. During the semester she is laid off during the reading week and again at the end of the semester for about three weeks until the next semester starts. Her employer did not give her an ROE for any of times she was not working. It was not until she found out that she was eligible for

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[3] *Employment Insurance Act*, subsection 10(4). This is how I reference the law that applies to this appeal
[4] *Canada (Attorney General) v Burke*, 2012 FCA 139. This is how I reference the court cases containing principles the law requires me to apply to the circumstances of this appeal.
[5] *Canada (Attorney General) v Burke*, 2012 FCA 139.
[6] *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[7] *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[8] The Claimant has to prove this on a balance of probabilities which means it is more likely than not the events occurred as she has described those events.

EI in June 2019 that she saw on the EI website that she needed an ROE. She had to email her employer for a copy of her ROE.

[11] The Claimant testified that it was her spouse who found out that she might be eligible for EI benefits. He was talking to a co-worker whose spouse is a teacher. The co-worker said his spouse was receiving EI while not working. The Claimant's husband called her from his work, told her this and suggested she apply. The Claimant applied for EI benefits the same day.

[12] The Claimant testified that she had worked for a school board before working with the college. The school board human resources (HR) staff would talk to her and other temporary teachers who were about to be laid off to let them know when to apply for EI benefits. The HR staff would make sure the teachers knew to apply or to renew a claim. She also received EI maternity benefits. When she moved to a new city and started work at the college there was no such advice.

[13] The Claimant testified that she had to ask the Dean's office if she was hired for the next semester. When she found out she was not hired, her priority was to look for summer jobs. She went to all the faculties to see if they needed anyone. Her past experience with EI did not come to her mind, nor did she think about applying for EI benefits. She submitted that just because she did not submit her claim on time, the Commission "cannot classify her as not being a reasonable person."

[14] The Commission says that the Claimant did not show good cause for the delay because she did not act like a reasonable person in her situation would have done to verify her rights and obligations under the *Employment Insurance Act*. The Commission says the Claimant did not contact Service Canada or look at its website to see if she was eligible for benefits. It says by not taking any action the Claimant did not demonstrate that she acted as a reasonable person under the circumstances.

[15] I find that the Claimant has not proven there was good cause for the delay in applying for benefits because she was aware of EI benefits but did not act promptly to determine her entitlement to those benefits. The Claimant testified that she was aware of employment insurance benefits through her prior employment as a teacher. Her former employer was diligent in giving her and other temporary teachers advice on how and when to apply for EI benefits. Her current employer did not provide this type of advice. However, it is not up to the employer to tell their employees how and when to apply for EI benefits. I admire the Claimant's desire to find employment once she knew that she would not be re-hired. However, the law is clear that ignorance of law, even coupled with good faith, is not sufficient to

establish good cause.[9] The onus is on Claimant to take reasonably prompt steps to understand her entitlement to EI benefits and her obligations under the law, not to passively wait for her employer to tell her how and when to apply for EI benefits. A reasonable person would have made a telephone call, or visited a Service Canada centre, or looked online to inquire about her entitlement to benefits. Had she contacted the Commission she would have learned that it is important to make her claim for employment insurance benefits soon after her separation from employment. The Claimant failed to take any steps to make inquiries with the Commission after becoming unemployed in April 2019. As a result, I must find that she has failed to prove she had good cause for the entire period of the delay and refuse her request to antedate her claim for EI benefits.

[16] The Claimant has not proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay. So, it is not necessary for me to consider whether the Claimant qualified for benefits on the earlier day.

CONCLUSION

[17] The appeal is dismissed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	November 15, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. M., Appellant

[9] *Attorney General of Canada v. Kaler*, 2011 FCA 266