



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MA v Canada Employment Insurance Commission*, 2019 SST 1710

Tribunal File Number: GE-19-3313

BETWEEN:

M. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Mark Leonard

HEARD ON: November 14, 2019

DATE OF DECISION: November 25, 2019

DECISION

[1] The appeal is dismissed. The Appellant has not shown that she had good cause for the delay in applying for benefits. This means that the Appellant's application cannot be treated as though it was made on an earlier date.

OVERVIEW

[2] The Appellant was a Researcher for a University and became unemployed at the end of her contract August 31, 2018. The Appellant applied for employment insurance (EI) benefits on April 8, 2019. She is now asking that the application be treated as if it was made earlier, on September 1, 2018. The Canada Employment Insurance Commission has already refused this request.

[3] I must decide whether the Appellant has proven that she had good cause when she delayed making her application for benefits. The Commission says that the Appellant does not have good cause because she did not act as a reasonable person would have in similar circumstances to make herself aware of her rights and obligations under the *Employment Insurance Act*.

[4] The Appellant disagrees and says that she did act as a reasonable person given that she was unfamiliar with the EI program, her Record of Employment was delayed in reaching her, and she was searching for a new job.

ISSUE(S)

[5] I must decide whether the Appellant's application for benefits can be treated as if it had been made on September 1, 2018. (this is called antedating the application).

ANALYSIS

[6] 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

[7] Since the main arguments before me are about whether there was good cause, I will start with that.

[8] To show good cause, the Appellant has to prove that she acted like a reasonable and prudent person would have in similar circumstances.² The Appellant has to show this for the entire period of the delay.³ For the Appellant, the period of delay is from September 1, 2018, to April 8, 2019.

[9] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁴ If the Appellant did not take these steps, then she must show that there were exceptional circumstances that explain why she did not do it.⁵

[10] The Appellant has to prove that it is more likely than not⁶ that she had good cause.

Did the Appellant have good cause for the delay in applying for EI benefits?

[11] I find that the Appellant has not shown that there was good cause for the delay in applying for benefits.

[12] The Appellant says that she had good cause for the delay because;

1. She was unfamiliar with the employment insurance program and was never advised by anyone at her employment that she was eligible for EI.

¹ Subsection 10(4) of the *Employment Insurance Act*.

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.

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

⁶ The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

2. That she was awaiting her Record of Employment (RoE) that was not immediately sent to her by the University.
3. She believed she would only be unemployed for a short duration.

[13] The Commission says that that the Appellant did not show good cause for the delay because.

1. Ignorance of the law is not a defence. The obligation is on the Appellant to know their rights and obligations.
2. A RoE is not necessary to make an initial claim for benefits and not having one is not considered good cause for a delay in filing an application for benefits.
3. Anticipating a new employment in a short period of time is not good cause for a delay in making an initial claim for benefits.

[14] The Appellant testified that when her contract ended, she called the University human resources department several times to discuss her contract and pay. She stated that during those conversations she was never informed that she was entitled to EI benefits. She offered that during her employment such topics as EI were not discussed with colleagues so she was not familiar with the program or the process of making a claim. She stated that she was paid by direct deposit and was not aware of the deductions for such things as EI.

[15] Additionally, she believed that she would find employment quickly and immediately began sending out resumes. She testified that she received two responses and attended interviews but was left waiting to hear if she had been selected.

[16] She testified that she only became aware that she could apply for EI benefits when she sought the services of an income tax preparer in April 2019. He told her she could and should apply for EI benefits. It was at this time she contacted the University to ask for her RoE. She made an initial claim in April 2019.

[17] The Appellant says that given all of her circumstances, she acted as a reasonable person. She applied for benefits when she became aware that she met the requirements.

[18] The Appellant is a very well-educated person holding a PhD in philosophy and working toward a PhD in Chemistry. She has lived in Canada close to six years.

[19] The Appellant testified that she had worked previously for the University as a Teaching Assistant and that she was paid in this role. She stated that she had received a RoE from this job.

[20] The Appellant admitted that she was aware of the existence of the EI program when her contract ended. But, because she did not receive her RoE immediately, she did not know how many hours she had accumulated and if she would qualify for EI benefits. Plus, she believed she would not be unemployed for long given her qualification. She anticipated new employment in the very short term.

[21] Given the assertion by the Appellant that she had concerns regarding the number of hours she had accumulated; I discount her assertion that she was unfamiliar with EI. I am satisfied that the Appellant was sufficiently aware of the EI program and its obligations to know that she needed to make an initial claim for benefits, or at least seek additional information to educate herself on her rights and obligations.

[22] Examination of the submissions of the Appellant shows that she had applied for jobs with two employers. These applications and interviews occurred in September and October 2018. After that time, there are no further submissions detailing jobs that the Appellant applied for. When I asked the Appellant about this, she said that she travelled abroad to visit her family for 40 days in November and December 2018. She stated that she was still looking for work during this time and would have returned to Canada if she had found something. There was no evidence that supports the claim that the Appellant was looking for work in Canada during her absence. I am not satisfied that the Appellant was looking for work nor do I believe that she would have interrupted her trip abroad to return to Canada for a job interview.

[23] I find that there is a more likely reason that the Appellant did not immediately apply for benefits. She had plans to travel abroad to visit family for an extended period of time. Had the Appellant applied for benefits she would have been required to remain in Canada and demonstrate that she was actively seeking employment and filing her biweekly claims for benefits.

[24] I find that the Appellant did not act as a reasonable person given similar circumstances. She has not shown that she took reasonably prompt steps to educate herself on her rights and obligations under the *Act* because;

1. She had sufficient knowledge of the EI program that she should have made an initial claim or sought additional information
2. She was aware that she should receive her RoE from her employer and could have obtained it earlier or made a claim without it.
3. She believed that she did not need EI at the time her contract ended because she anticipated finding a new job quickly.
4. She did not want to interrupt her established travel plans abroad.

[25] I do not find that there were any exceptional circumstances that would have prevented the Appellant from taking prompt steps.

[26] The Appellant 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 Appellant qualified for benefits on the earlier day.

CONCLUSION

[27] The appeal is dismissed.

Mark Leonard

Member, General Division - Employment Insurance Section

HEARD ON:	November 14, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. A., Appellant