



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. V. v Canada Employment Insurance Commission*, 2019 SST 1682

Tribunal File Number: GE-19-3861

BETWEEN:

**S. V.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Christianna Scott

HEARD ON: December 4, 2019

DATE OF DECISION: December 19, 2019

## **DECISION**

[1] The appeal is dismissed. I find that S. V. (the Claimant) has not shown good cause for the delay in filing his application for regular employment insurance (EI) benefits.

## **PRELIMINARY MATTERS**

[2] The Claimant sent additional information after the hearing. I asked the Claimant a series of follow-up questions to better understand the information he sent. He answered my request for additional explanations. The Canada Employment Insurance Commission (the Commission) did not comment on the additional information.

[3] I took into consideration the post-hearing information because it is relevant to the appeal.

## **OVERVIEW**

[4] The Claimant worked for a little over two months before his position was eliminated on May 13, 2019. He was paid a lump sum severance equivalent to three months of pay. He also received vacation pay which was equivalent to about half a week of pay.

[5] The Claimant did not apply right away for EI benefits. He applied for EI benefits on September 9, 2019. The Claimant learned that, based on the date of his application he did not work enough insurable hours during the qualifying period to receive benefits. He asked for his application to be considered as having been made on May 13, 2019. This process of considering an application for benefits as having been made on an earlier date is called antedating.

[6] The Commission did not antedate the Claimant's application because it decided that the Claimant did not show good cause during the entire period of the delay in applying for EI benefits. The Claimant has appealed this decision before the Social Security Tribunal.

### **Facts agreed upon**

[7] The parties agree that the Claimant delayed approximately four months in making his application for EI benefits. They also agree that if the Claimant's application is antedated, he will have worked enough insurable hours during the qualifying period to be paid benefits.

### **Issues in this appeal**

[8] The Commission says that the Claimant did not show good cause for the entire period of the delay in filing his application for benefits. The Commission says that there is no indication that the Claimant took steps to get information about his rights. Also, the Commission argues that although the Claimant may have had good cause between May 13, 2019, and mid-August 2019, he did not show good cause between mid-August 2019 and September 9, 2019. The Commission argues that nothing prevented the Claimant from applying for benefits in mid-August.

[9] The Claimant disagrees. He says that he has good cause for the entire period of the delay because the human resources representative told him to wait to apply for EI benefits until he had depleted his severance payments. He says that he did not know that waiting to apply would impact whether he qualified for EI benefits. He followed the directions of the human resources representative and applied for benefits in September when he was certain that his severance and vacation pay had run out.

### **What I have to decide**

[10] I must decide whether the Claimant's application for benefits can be treated as if it had been made on May 13, 2019. This means that I must decide whether the Claimant has proven that he had good cause during the entire time he waited before making his application for benefits, between May 13, 2019, and September 9, 2019.

## **REASONS**

[11] To show good cause, the Claimant has to prove that he acted like a reasonable and prudent person. I must decide if the Claimant's behaviour is comparable to the way a reasonable and prudent person would act in similar circumstances.<sup>1</sup> This means that the Claimant has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>2</sup>

[12] 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.<sup>3</sup>

[13] The Claimant has to prove that it is more likely than not<sup>4</sup> that he had good cause.

### **Did the Claimant have good cause for the entire period of the delay in filing his application for EI benefits?**

[14] No, I find that the Claimant has not proven that he had good cause for the entire period of the delay in filing his application for EI benefits.

[15] The Claimant says that he had good cause for the delay because:

- The human resources representative of the Company told him to wait until he finished his severance pay before applying for benefits;
- He was waiting in good faith to exhaust his severance period before making his application.

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<sup>1</sup> *Canada (Attorney General) v Burke*, 2012 FCA 139. The case law that state that antedating is an advantage that should be applied exceptionally.

<sup>2</sup> *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>3</sup> *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>4</sup> The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

- He did not know that waiting to apply would have an impact on whether he qualified for benefits.

[16] The Claimant explained that when his position was eliminated, the human resources representative told that he would be paid a severance equivalent to three months of service and a few days of vacation pay. He was also told to wait to apply for EI benefits until his severance period was over because he would not be eligible for benefits before the severance was depleted. The Claimant says that he received his severance and vacation pay. He roughly calculated the delay to ensure that he had depleted these amounts before applying. He was on vacation with his family at the end of August and applied for benefits on September 9, 2019, when he was certain that his severance period had ended.

[17] The Claimant argues that he had always intended upon making a claim for benefits. He argues that from a practical perspective, his delay is immaterial because he would not have been able to receive benefits for most of the delay because he was paid severance.

[18] I accept the Claimant's testimony. He was clear and upfront about the reasons behind his decision to wait to apply. Despite this, I cannot accept the Claimant's arguments because they do not prove that he had good cause throughout the entire period of the delay.

[19] Although the misinformation provided by the human resources representative accounts for the Claimant's inaction until the end of the first week of August, it does not account for the entire period of the delay. The Claimant's severance and vacation period ended about the first week of August 2019.

[20] I conclude therefore that the balance of the delay (between the first week of August and September 9, 2019) is due to two factors. They are, the Claimant's good faith decision to fully exhaust his severance before he applied for damages and his lack of knowledge of how the delay would impact his ability to qualify for EI benefits.

[21] The case law has recognized that neither a claimant's good faith intentions nor their ignorance of the law constitutes good cause for the delay in making a prompt application for

benefits.<sup>5</sup> Even though the Claimant had every intention to apply for benefits from the outset and genuinely wanted to apply at a time when he had deleted his severance, these reasons do not support an argument for good cause.

[22] Moreover, I find that the Claimant did not act like a reasonable and prudent person would have acted in the circumstances. I find that a reasonable and prudent person would have contacted the Commission, at least sometime before the end of his severance period, to find out when he should make his application for benefits.

[23] I also note that the Claimant has received EI benefits in the past. He said that the previous time he applied for benefits at the end of employment, it was clear to him when he should make his application. At that time, his employer had financial problems and did not pay his severance so he applied shortly after leaving the workplace. I agree that the circumstances around this application are different from the previous time he applied for benefits. However, I find that this difference reinforces the conclusion that a reasonable and prudent person would have made further inquiries about when to promptly applying for benefits.

[24] Although the Claimant was away on vacation with his family at the end of August, I do not consider this to be exceptional circumstances that kept the Claimant from acting more promptly. The Claimant testified that during this time he continued to apply for work. If he continued to apply for work, this shows that the Claimant could have made his application for benefits on-line or at the very least contacted the Commission by phone to make his application.

[25] I sympathize with the Claimant and I recognize that this is a hefty consequence for a few weeks of delay in making his application. However, the most important factor in my assessment must be the reasons for the delay and not the length of the delay.<sup>6</sup> Unfortunately, the Claimant has not proven good cause for the entire period of the delay, particularly the period between mid August 2019 and September 9, 2019.

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<sup>5</sup> See *Canada (Attorney General) v Larouche*, A-644-93 and *Canada (Attorney General) v Albrecht*, A-172-85, where ignorance of the law does not amount to good cause; See *Canada (Attorney General) v Chan*, A-185-94, where good faith does not amount to good cause.

<sup>6</sup> *Canada (Attorney General) v McBride*, A-340-08.

## CONCLUSION

[26] The appeal is dismissed.

Christianna Scott  
Member, General Division - Employment Insurance Section

HEARD ON:	December 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. V., Appellant