



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. V. v Canada Employment Insurance Commission*, 2019 SST 1548

Tribunal File Number: GE-19-4117

BETWEEN:

M. V.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: December 17, 2019

DATE OF DECISION: December 31, 2019

Decision

[1] I am dismissing the appeal. The Claimant has not shown good cause for the entire period of the delay in asking to modify her claim for benefits.

Overview

[2] The Claimant left the country for six days while she was on a claim for employment insurance (EI) benefits. She could not be paid benefits while she was outside Canada, so she received partial benefits for two weeks of her claim because she was out of the country for several days of each week. The Claimant thought she would receive payment for those six days at the end of her claim.

[3] When she did not receive any more benefits at the end of her claim, she contacted the Commission and asked them to pay her for two weeks of full benefits at the end of her claim, instead of the two weeks of partial benefits while she was out of the country. The Commission denied her request because they said she did not have good cause for the delay in asking to modify her claim for those weeks. The Claimant disagrees and says that she delayed because she thought she would receive those benefits automatically.

What I must decide

[4] The Claimant is looking to change her claim for two weeks of benefits. She claimed partial benefits for two weeks and now wants to claim no benefits for those two weeks, so that she can claim two full weeks of benefits at a later date. I must decide if the Claimant had good cause for the delay in asking to change her claim.

Reasons for my decision

[5] I will start by clarifying the issue that is under appeal in this case. The Claimant applied for EI benefits and began submitting her bi-weekly reports to the Commission. She went on vacation in another country and reported that she was outside of Canada from February 14 to February 23, 2019, on her next bi-weekly report. She could not receive benefits for the six days that she was outside of Canada, so she received partial benefit payments for the weeks starting February 10 and February 17, 2019.

[6] The Claimant believed that she would receive an extra six days of benefit payments at the end of her claim. When her benefit payments ended in August 2019, she contacted the Commission and was told the only way to receive the full benefit payment for those weeks was to request a “refusal of payment” for the weeks in question. This would allow her to claim two weeks of full benefits at the end of her claim. However, the Commission said it could not process her request to refuse payments for those weeks because she had not made the request within the allowed time and had not shown good cause for being late.¹

[7] There is no provision in the legislation or the regulations which specifically refer to a refusal of benefits. Generally, a claimant will simply not file a report for a week for which they do not want to receive any EI benefits. In the decision letter dated September 25, 2019,² and the reconsideration decision dated November 26, 2019,³ the Commission treated the Claimant’s request as analogous to making a late claim for benefits for the weeks starting February 10 and February 17, 2019. It applied the provisions in the *Employment Insurance Act* and *Employment Insurance Regulations* that deal with requests to have a claim be considered to have been made at an earlier date. This is also known as “antedating” or “backdating” a claim.

[8] I agree with the Commission’s characterization of the issue under appeal. Ultimately, the Claimant is asking to change her claims for EI benefits for the weeks starting February 10 and February 17, 2019, so she can claim no benefits for those weeks. The Claimant filed bi-weekly report, stating that she was out of the country for several days. This resulted in her being paid partial benefits for the affected weeks. The Claimant now wants to claim no benefits for those weeks, so she can file a new report and claim full benefits for two weeks at a later time. Therefore, I will decide if the Claimant’s request to change her claims for the weeks starting February 10 and February 17, 2019, can be considered to have been made at an earlier date.

¹ The Commission’s decision letter is found at page GD3-15 of the appeal file.

² I am referring again to the decision letter at GD3-15 of the appeal file.

³ I am referring here to the Commission’s reconsideration decision found at GD3-19 of the appeal file.

[9] The law says that a weekly claim for EI benefits must be made within a certain period of time.⁴ That period of time is three weeks after the week for which benefits are claimed.⁵

[10] A claim can be considered to have been made at an earlier date if the claimant can show there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was actually made.⁶ The Claimant has to prove that it is more likely than not that she had good cause for the delay.⁷

[11] To show good cause, the Claimant has to prove that she acted like a reasonable and prudent person would have in similar circumstances. The Claimant has to show this for the entire period of the delay.⁸

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

[13] I find that the Claimant did not show good cause for the entire period of the delay in asking to change her claim for benefits for the weeks starting February 10 and February 17, 2019. My reasons for this decision are set out below.

[14] In the Claimant's case, the period of delay is from March 2, 2019, the last day she could have made the claim, to September 25, 2019, the day she asked the Commission to change her claims for the weeks in question.

[15] The Commission provided a record of a conversation with the Claimant on September 25, 2019. In this conversation, the Claimant referenced a previous phone call with a Commission agent, who had told her that she needed to request a refusal of payment for the two weeks in February 2019. At the hearing, the Claimant was unable to recall the exact date of this previous

⁴ This is set out in section 50(4) of the *Employment Insurance Act*.

⁵ The prescribed period of time to make a claim for EI benefits for a certain week is set out in section 26(1) of the *Employment Insurance Regulations*

⁶ The provision for backdating a claim is set out in section 10(5) of the *Employment Insurance Act*

⁷ The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

⁸ *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁹ *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

phone conversation, but said that it occurred around the same time as the conversation on September 25, 2019.

[16] I accept the Claimant's testimony that she spoke with the Commission about changing her claims for the weeks starting February 10 and February 17, 2019, around September 25, 2019. Because the Claimant could not recall exactly the date she spoke with the Commission the first time, I will rely on the Commission's record of the conversation it had with the Claimant on September 25, 2019, as the date of her request to change her claims.

[17] The Claimant says the reason for the delay in asking to change her claim is because she assumed that she would receive the rest of the payment for the weeks starting February 10 and February 17, 2019, at the end of her claim. She said that she understood that she was not entitled to receive benefits while she was outside Canada. So, when she received partial benefit payments for those two weeks, she believed that was correct. However, she also believed that she would be paid for the six days that she was outside Canada at the end of her claim.

[18] At the hearing, the Claimant said that she based this assumption on her calculation of her entitlement to benefits in terms of days. She did this by multiplying the number of weeks to which she was entitled to benefits by the number of work days in a week. She said that she was entitled to 38 weeks of EI benefits. From that, she calculated that she was entitled to 190 days of benefits, but that she had only been paid 184 days of benefits because of the six days that she was outside Canada.

[19] The Claimant said she assumed she would receive payment for these six days at the end of her claim. When she did not receive any further payment, she contacted the Commission. She was told that she should have requested to refuse payment for the two weeks of partial benefits, so she could claim them as full weeks of benefits at a later time. After that call, she searched online for information about when to refuse payment of a partial week of benefits and could not find anything on the Service Canada website. When she spoke to an agent again about the issue, the agent could also not direct her to anything on the website that explained this process.

[20] It is worth clarifying here that a claimant's entitlement to benefits is determined by the legislation in terms of weeks, not days. How this works is that once a claimant establishes a

benefit period, they can be paid EI benefits for a week of unemployment within that period. The *Employment Insurance Act* provides that a claimant can receive a maximum number of weeks of benefits, which is determined by the claimant's region and the rate of unemployment in that region at the time they applied for benefits.¹⁰

[21] Neither the legislation nor its regulations refer to a claimant's entitlement to benefits in terms of days. Rather, a claimant is entitled to receive benefits up to a maximum number of weeks. This means a claimant can be paid up to a specified number of weeks of benefits, regardless of whether they receive a full benefit payment for each week. So if a claimant is unable to be paid for a full week of benefits (for example, if they worked for a day, or were out of the country for a day), they can still claim EI benefits and get paid for the portion of the week that they met the requirements to receive benefits.

[22] In the Claimant's case, she claimed benefits for the weeks starting February 10 and February 17, 2019, by submitting a bi-weekly report about her availability for work and employment activity in that week. The Claimant stated that she was outside Canada for a portion of each of those weeks. She was unable to be paid benefits for the days she was out of the country. However, she still received a partial benefit payment for both weeks, which means she was paid EI benefits for those two weeks of her entitlement.

[23] The Commission says the Claimant did not prove that she had good cause for the delay in asking to change her claims. It says the Claimant was aware that she received partial benefits for the weeks starting February 10 and February 17, 2019, and delayed asking to change her claims because she assumed that she would receive the rest of her partial benefits at a later date.

[24] The Commission also says that the Claimant's inability to find information about this process online does not absolve her of the responsibility to contact the Commission directly. This is because the Service Canada website does not directly address the specifics of each claimant's circumstances and cannot be relied on solely as an authority.

¹⁰ This is set out in section 12(2) of the *Employment Insurance Act*.

[25] To show good cause, a claimant has to show that they acted as a reasonable person in the same situation would have acted to ensure compliance with their rights and obligations under the *Employment Insurance Act*.¹¹

[26] The Claimant did not ask the Commission to change her claims for the weeks in question until September 25, 2019, because she believed she would receive payment for the six days she was outside Canada at a later date. The Claimant agreed that she did not contact the Commission at the time she made her bi-weekly report, or when she received partial payment for those weeks. She visited the Service Canada website and it confirmed that she was unable to be paid benefits while she was outside Canada. It did not inform her that she had the choice to not claim benefits for those weeks.

[27] I acknowledge that the Claimant believed that she acted correctly to receive her maximum entitlement to benefits. However, she made several assumptions about how her entitlement to benefits would be paid to her. First, she assumed that she would receive 190 days of benefits because she was entitled to a maximum of 38 weeks of benefits. Second, the Claimant assumed that she would automatically be paid any outstanding days of benefit entitlement at the end of her claim. I can see no basis in the law for the Claimant's assumptions and she has not provided any evidence that she made efforts to confirm her understanding of these assumptions, either.

[28] I recognize that the Claimant searched the Service Canada website for information prior to making her claims for the weeks she was outside Canada. I accept her testimony that she did not find any information on the website about how to refuse payment for a week of partial benefits at the time she made her report, or at the end of her claim. However, I agree with the Commission's submissions that the Service Canada website cannot be used to address a claimant's specific circumstances. For that reason, I find a reasonable and prudent person would have inquired directly with the Commission about the circumstances of their case, rather than relying solely on the general information provided on the Service Canada website.

¹¹ *Paquette v. Canada (Attorney General)*, 2006 FCA 309

[29] In the Claimant's case, it would have been reasonable to ask about how her entitlement to benefits are calculated. She could have done this by calling the Commission by phone or visiting a Service Canada location in person. It would also have been reasonable for the Claimant to contact the Commission to ask about what the consequences of a partial payment on her overall claim would be, either before making the report or shortly afterwards. This may have allowed the Claimant to modify her claim immediately, once she learned that claiming a partial week of benefits would prevent her from receiving her maximum entitlement to benefits. These would have been reasonable actions for the Claimant to take.

[30] The Claimant did not make any efforts to contact the Commission to verify her assumptions or understand her rights and obligations under the law until after her claim ended. I find a reasonable and prudent person in the Claimant's circumstances would have taken steps to contact the Commission to understand her entitlement to benefits when she submitted her bi-weekly report, or when she received a partial benefit payment for the weeks in question. Therefore, I find the Claimant did not act as a reasonable person would have done in her same situation.

[31] Because the Claimant did not act as a reasonable person would have done, I find the Claimant has not proven that she had good cause for the delay in asking to change her claim for benefits for the weeks starting February 10 and February 17, 2019.

CONCLUSION

[32] The Claimant did not have good cause for the delay in asking to change her claim for benefits for the weeks starting February 10 and February 17, 2019. So her claims cannot be considered to have been made on the earlier date. This means the appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	December 17, 2019
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METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. V., Appellant