



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. N. v Canada Employment Insurance Commission*, 2020 SST 222

Tribunal File Number: AD-19-886

BETWEEN:

P. N.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: March 12, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed. I have made the decision the General Division should have made and decided that the Claimant had good cause for the delay in filing her claim reports throughout the entire period of her delay.

OVERVIEW

[2] The Claimant was laid off at the end of September 2018. She made an initial application for Employment Insurance (EI) benefits on October 1, 2018, but did not file any claims reports until April 2019. The Commission refused to backdate the Claimant's benefits to the beginning of her claim because it did not accept that she had good cause for failing to file the reports on time. The Commission maintained its decision when the Claimant asked for a reconsideration.

[3] The Claimant appealed to the General Division of the Social Security Tribunal, but her appeal was dismissed. She is now appealing to the Appeal Division.

[4] The Claimant's appeal is allowed. The General Division failed to consider the nature of the benefits under the Alberta Coal Workforce Transition Program (ACWTP) and the important role played by her ACWTP caseworker, who led her to believe she had satisfied all of the requirements to be entitled to EI benefits. The Claimant had good cause throughout the period of her delay in filing claim reports.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[5] "Grounds of appeal" are the reasons for the appeal. To allow the appeal, I must find that the General Division made one of these types of errors:¹

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.

¹ This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act*.

3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

ISSUE

[6] Did the General Division make an important error of fact when it found that the Claimant acted unreasonably in delaying despite advice she received from a provincial benefit program?

ANALYSIS

Reasonableness of Claimant's delay

[7] According to the *Employment Insurance Act*, a claimant may make a late claim for benefits only if he or she can show that there was a good cause for the delay throughout the period of the delay.² The Claimant said that she was late in filing her claim reports because she had been relying on information and advice from a caseworker with the provincial ACWTP "Bridge to Re-employment" benefit program. The General Division did not accept that this was good cause. It did not find it reasonable that the Claimant waited so long to check on her EI benefits "even if she was given advice from people in the provincial program to wait."³ It also did not find that any exceptional circumstances existed to excuse the Claimant from her obligation to take reasonably prompt steps.

[8] The Claimant emphasized that she did not take steps to follow up with the Commission about her claim because she was pursuing an application to ACWTP at the same time. The provincial program was set up to help former coal workers transition to new employment, and it does this by coordinating provincial benefits under the program with federal EI benefits.

[9] The Claimant believed that she was meeting the Commission's requirements by meeting the requirements of ACWTP. The Claimant told the Commission that ACWTP program benefits were dependent on her receipt of EI benefits.⁴ She testified that the ACWTP process was to occur in tandem with her EI claim.⁵

² *Employment Insurance Act*, section 10(5).

³ General Division decision, para 21.

⁴ GD3-33

⁵ Audio record of General Division hearing at timestamp 00:08:00

[10] The Claimant had no reason to believe that she had not done all that the Commission required for her to obtain benefits. She had received independent confirmation of her EI application, and she could see from her online Service Canada account (MSCA) that her claim was approved. The Commission had told her to expect an access code, but the Claimant said that it was not clear to her when she could expect to receive the code or when she would have to file reports.

[11] At the same time, the Claimant received positive assurances from her ACWTP caseworker that her ACWTP application, *including* her EI application, was on track.⁶ The Claimant testified that she had been in frequent contact with her caseworker through emails, in conversations and by the completion and submission of required forms. She said that this was occurring in tandem with her EI claim. She also stated that her caseworker told her that the caseworker was able to see the Claimant's EI file and that there was nothing more that the Claimant needed to do.⁷

[12] The General Division did not refer to much of the evidence from which it might have inferred that the Claimant was acting reasonably in relying on the advice of the ACWTP caseworker. It did not refer to evidence that the Claimant's entitlement to benefits under the ACWTP program was linked to her entitlement to EI benefits, and that the Claimant was engaged in monitoring and satisfying the requirements of the ACWTP program. The General Decision did not acknowledge evidence that the ACWTP caseworker was someone who was knowledgeable about the Claimant's application for EI benefits because she had the ability to view the progress of the Claimant's EI file. The General Division decision did not refer to the Claimant's evidence that she understood she had met all the requirements of the ACWTP program based on what her caseworker had told her.

[13] The Commission has conceded that the General Division apparently disregarded some of the Claimant's evidence that the provincial caseworker was "someone the Claimant could trust in the circumstances".⁸ The Commission agrees with the Claimant that the General Division made an important error of fact in finding that the Claimant did not act reasonably. I accept the

⁶ *Ibid* at timestamp 00:06:35

⁷ *Ibid* at timestamp 00:08:30

⁸ AD2-4

Commission's submissions. I find that the General Division made an important error of fact when it ignored evidence that would support a conclusion that the Claimant acted reasonably in relying on her caseworker's guidance.

Summary of errors

[14] I have found that the General Division made an important error of fact. This means I must consider what manner of remedy is appropriate.

REMEDY

Nature of remedy

[15] I have the authority to change the General Division decision or make the decision that the General Division should have made.⁹ I could also send the matter back to the General Division to reconsider its decision.

[16] Both the Claimant and the Commission have suggested that I make the decision that the General Division should have made. I agree that the General Division has already considered all the issues raised by this case and that it is therefore appropriate that I make the decision based on the evidence that was before the General Division.

New decision

[17] The Claimant and the Commission both submit that I should find the Claimant to have had good cause for delaying to file her claim reports, and I agree.

[18] I accept that the ACWTP program coordinates provincial benefits with EI benefits and that the application for, and entitlement to, EI benefits is a step in qualifying for the ACWTP benefits. I accept that the Claimant was assigned a caseworker who provided her with individualized information, advice, and updates that were related to both her ACWTP application and her EI application. I also accept that the Claimant based her belief that she had met all of the Commission's requirements for benefits on what she was told by the caseworker. I find that the Claimant acted diligently in trying to satisfy the ACWTP requirements and that she acted

⁹ My authority is set out in section 59 of the DESD Act.

reasonably in relying on the caseworker's advice that she had done all she needed to do to obtain EI benefits.

CONCLUSION

[19] The appeal is allowed. The Claimant's claims for benefits for the weeks from September 30, 2018, to November 3, 2018, shall be deemed to have been made as required and at the prescribed time, so that those claims may be allowed.

Stephen Bergen
Member, Appeal Division

HEARD ON:	March 6, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. N., Appellant Josée Lachance, Representative for the Respondent