



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. O. v Canada Employment Insurance Commission*, 2020 SST 770

Tribunal File Number: GE-19-3755

BETWEEN:

A. O.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: December 9, 2019

DATE OF DECISION: March 18, 2020

DECISION

[1] The appeal is dismissed. The Appellant (is the Claimant) did not show good cause for the delay in submitting his last claim report. This means that the Claimant's report cannot be treated as though it was made on an earlier date.

OVERVIEW

[2] The Claimant applied for employment insurance benefits when he was laid off from work on September 9, 2018. At the time, he did not receive any benefits because the monies he received upon separation from his employer were allocated to his benefit period from September 9, 2018 to October 6, 2018.¹ The Claimant returned to work but the employer laid him off again on May 3, 2019. He applied to have his application renewed on May 9, 2019 but did not file any claim reports. He called the Canada Employment Insurance Commission (Commission) on July 5, 2019 and asked that his reports be backdated to May 5, 2019.

[3] The Commission denied the Claimant's request because he did not show good cause for the delay. The Claimant requested that the Commission reconsider its decision because he was not aware that he had to complete his reports before he received his first benefits payment. He thought that it would take one to two months to process his claim and that it was an honest mistake. The Commission said that the Claimant had to submit his reports no later than June 1, 2019 and his reasons for the delay did not show good cause.

[4] I find the Claimant's reasons for delaying to submit his claim reports do not show that he acted as a prudent person would have done, in the same situation, to learn about his rights to benefits. I provide my reasons below.

ISSUE

Did the Claimant have good cause for delaying to submit his claim report?

¹ The Commission advised the Claimant of the allocation of the severance monies in a letter dated October 10, 2018 marked as exhibit GD3-18 and GD3-19.

ANALYSIS

[5] The Claimant must submit his claim reports for benefits within three weeks after the week he is claiming benefits.² He is not entitled to receive benefits for as long as he does not comply with this requirement.³

[6] When a claimant makes a claim after the time prescribed, the Commission may consider ‘antedating’ a claim. That is, it may consider the claim as being made on an earlier day. In order for the Commission to do so, the claimant must show that there was ‘good cause’ for the delay. He must show good cause for the entire period beginning on the earlier day and ending on the day when the claim was made.⁴ For the Claimant, the period of delay is from May 5, 2019 to July 5, 2019.

[7] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have in similar circumstances.⁵ The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁶ If the Claimant did not take these steps, then he must show that there were exceptional circumstances that explain why he did not.⁷

[8] The Claimant has to prove that it is more likely than not⁸ that he had good cause.

[9] The Claimant applied to renew his claim on May 9, 2019. He did not submit his claim report at that time. He was supposed to submit his report for benefits no later than June 1, 2019 i.e. three weeks after submitting his renewal claim according to the Regulations. However, the Claimant did not call the Commission to enquire about his claim and complete his report until July 5, 2019.

[10] The Claimant says that he had good cause for the delay because he did not know that he had to submit his report at the time that he applied for benefits again. He assumed that he had to

² Section 26(1) of the *Employment Insurance Regulations* (Regulations)

³ Sections 50(1) of the *Employment Insurance Act* (EI Act)

⁴ Section 10(5) of the EI Act

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.

wait until he received his first benefit payment. Further, he relied on what he was told by friends and his supervisor at work i.e., that it would take two months to receive benefits so he waited until then to call the Commission. The Claimant testified that the last time he applied for benefits was ten years ago in 2008 and he did not remember the process. He also explained that, at the time, he was renovating his house and misplaced the letters he had received from the Commission. He immediately called in when he discovered the letter that included his access code and the October 10, 2018 decision that explained the allocation of separation earnings.

[11] The Claimant also said that his daughter helped him fill out his initial application form back in September 2018. At the time, he did not look at it and she did not pay attention to the requirements. I note that the Claimant was not informed of his obligations under the law only on that application form. He was also advised of the requirement to complete the benefit forms on his renewal application and on the Commission's decision letter dated October 10, 2018.⁹ I find that waiting two months to enquire about his right to benefits for this reason, is not what a prudent person would do in his financial situation. Further, ignorance of the law, even when acting in good faith, is not good cause for delay.¹⁰

[12] Unfortunately, the Claimant also made an unfounded assumption that he had to wait until he received his first benefit payment before he could submit his claim report. He also relied on unverified information from his friends and supervisor, which is not good cause for the delay.¹¹ The Claimant testified that this is what he truly believed. Even so, when he did not receive his first benefit payment shortly after applying, it would have been reasonable for him to make enquiries about the delay and his right to benefits.

[13] I also understand that going through renovations at his home can be stressful and important documents could be misplaced and later discovered. Although his explanation is plausible, I do not find that these were exceptional circumstances that prevented him from enquiring about his rights to employment insurance benefits. The Claimant did not indicate that he was prevented in any way from applying for benefits in a timely manner.

⁹ Exhibit GD3-18, GD3-30

¹⁰ *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Somwaru*, 2010 FCA 336

¹¹ *Trinh*, 2010 FCA 335; *Rouleau*, A-4-95

[14] For all of the above reasons, I find that the Claimant has not proven that there was good cause for the delay in applying for benefits because he did not take reasonable and prompt steps to learn about his rights and obligations under the EI Act. Unfortunately, he did not take any steps or make any enquiries at a Service Canada office or its website until July 5, 2019.

[15] The Claimant has not shown that he had good cause for the delay in submitting his claim report. His request to antedate his claim report to May 5, 2019 is therefore denied.

CONCLUSION

[16] The appeal is dismissed.

Eleni Palantzas

Member, General Division - Employment Insurance Section

HEARD ON:	December 9, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	A. O., Appellant