



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CF v Canada Employment Insurance Commission*, 2020 SST 796

Tribunal File Number: GE-20-1454

BETWEEN:

C. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: June 8, 2020

DATE OF DECISION: June 10, 2020

DECISION

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

OVERVIEW

[2] The Claimant applied for employment insurance sickness benefits on September 12, 2019. She asked the Canada Employment Insurance Commission (Commission) to treat her application as if she had applied on January 18, 2019. The Commission refused her request because it says she does not meet the requirements to have her application backdated. This is also called "antedating" the application.

[3] I have to decide if the Claimant has proven that she had good cause to delay applying for sickness benefits.

[4] The Claimant says she has good cause because she did not know she could apply for sickness benefits. The Commission says she has not shown good cause because a reasonable person would have felt prompted to contact the proper authorities to ask about benefits.

ISSUE

[5] I have to decide if the Claimant's application for benefits can be treated as if it had been made on January 18, 2019.

ANALYSIS

[6] To have an application for benefits antedated, claimants have to prove that:

- a) they had good cause for the delay during the whole period of the delay; and
- b) they qualified for benefits on the earlier day.¹

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

[7] The Claimant has to prove that it is more likely than not that she had good cause for the delay.²

[8] To show good cause, the Claimant has to prove that she acted like a reasonable and prudent person would have in similar circumstances.³ The Claimant has to show this for the entire period of the delay, from January 18, 2019, to September 12, 2019.⁴

[9] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁵ If the Claimant did not take these steps, then she must show that there were exceptional circumstances that explain why she did not do so.⁶

[10] The Claimant says that she had good cause for the delay because:

- a) she did not know she could apply for sickness benefits until her employer encouraged her to call Service Canada in August 2019;
- b) when she called Service Canada in August 2019, she was told that backdating her claim to January 2019 would not be a problem, and that she was entitled to her lost wages; and
- c) she received sickness benefits in January 2020 under similar circumstances.

[11] The Commission argues that the Claimant did not show good cause for the delay because she did not act as a reasonable person in her situation. The Commission says a reasonable person who was not aware that they could apply would have felt prompted to contact the proper authorities to ask about possible action. It says the Claimant did not try to obtain information from Service Canada.

[12] For reasons that follow, I find that the Claimant has not proven that there was good cause for her delay in applying for benefits.

² The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

³ *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁴ *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

⁶ *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[13] First, I find that she did not act like a reasonable and prudent person because such a person would have made inquiries about possible benefits when she was off work for three weeks in January 2019, or shortly after she returned to work. The Claimant made no inquiries until August 2019. This was neither reasonable nor prudent.

[14] Secondly, she did not take reasonably prompt steps to understand her entitlement to benefits or obligations under the law. The Claimant did not take any steps until August 2019, after her employer encouraged her to call Service Canada. I find this was not “reasonably prompt,” as it took her more than six months to make her first inquiries.

[15] I considered that she did not realize that she could receive sickness benefits until her employer encouraged her to call Service Canada. This is not enough to prove just cause. The Federal Court of Appeal has confirmed that ignorance of the law, even when coupled with good faith, is not enough to establish good cause.⁷

[16] The Claimant testified that during the period in question she was struggling with medical and financial issues. She was not in the right state of mind to consider what benefits might be available to her. However, by the very nature of this type of benefit, claimants looking for sickness benefits are experiencing medical problems, and many have financial difficulties. As such, I find that these are not exceptional circumstances that would explain why she did not take reasonably prompt steps to find out about benefits.

[17] The Claimant says she applied for benefits in August 2019, and again in September 2019. The only application form I see in the file is dated September 12, 2019. The Commission started the benefit period on this claim on August 11, 2019.⁸ While I accept that the Claimant spoke to a Service Canada agent in August 2019, I find it unlikely that she applied for benefits in August 2019. If she had, her September 2019 application would have been a renewal claim, not an initial claim for benefits.

[18] Even if she had applied for benefits in August 2019, she still did not act like a reasonable and prudent person, or take reasonably prompt steps to understand her entitlement to benefits.

⁷ *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁸ On page GD4-1, paragraph 2, the Commission says that the Claimant’s benefit period started on August 11, 2019, and that her application dated September 12, 2019, was an initial claim for benefits.

This is because she did not make any inquiries about benefits until more than six months after the date she wants her claim for sickness benefits to start.

[19] The Claimant says that when she called Service Canada in August 2019, the agent told her that the application could be backdated to January 2019. It is unfortunate that the agent gave her such advice. However, this information does not change my decision that she has not proven that she had good cause to delay applying for benefits.

[20] The Claimant says she received benefits in January 2020, under similar circumstances. Whether the Claimant received benefits in January 2020, does not affect my decision about whether she had good cause for this delay in applying for benefits.

[21] Since the Claimant has not proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay, it is not necessary for me to consider whether she qualified for benefits in January 2019. Her application cannot be backdated.

CONCLUSION

[22] The appeal is dismissed.

Angela Ryan Bourgeois

Member, General Division - Employment Insurance Section

HEARD ON:	June 8, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. F., Appellant