



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RG v Canada Employment Insurance Commission*, 2021 SST 59

Tribunal File Number: GE-20-2334

BETWEEN:

R. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

HEARD ON: February 5, 2021

DATE OF DECISION: February 9, 2021

DECISION

[1] The appeal is allowed.

[2] The Appellant has proven he had good cause for his delay in providing the proof of identity document requested by the Commission. Therefore, his claim for employment insurance benefits (EI benefits) for the benefit period starting November 19, 2017 should not be denied.

OVERVIEW

[3] The Appellant worked at seasonal employment as a landscaper. When the season ended in November 2017, he applied for EI benefits as he had done in previous years. This time, the Canada Employment Insurance Commission (Commission) asked him to provide proof of his identity because his date of birth and mother's maiden name did not match the information in the Social Insurance Registry. On December 28, 2017, after waiting 4 weeks for a response, the Commission issued a decision that his claim for EI benefits could not be processed until he provided appropriate identification to Service Canada. The Appellant submitted some of his Portuguese identity documents, but the Commission asked him to provide proof of his Canadian status. On January 20, 2020, over two years later, he submitted his Permanent Resident Card. The Commission accepted this as a valid primary identity document that confirmed the Appellant's identity. But the Commission denied his claim for EI benefits from November 19, 2017 because it decided that he failed to provide his identification in a timely manner and did not have good cause for the delay.

[4] The Appellant asked the Commission to reconsider its decision. He argued that he complied with the request for identification and should not be penalized because it took a long time for his permanent residency card to be issued. The Commission maintained the disentitlement on his claim, and he appealed to the Social Security Tribunal of Canada (Tribunal).

[5] On July 6, 2020, the Tribunal dismissed his appeal. The Appellant appealed that decision to the Appeal Division of the Tribunal, arguing that the Tribunal's decision was procedurally unfair to him. On November 27, 2020, the Appeal Division allowed the Appellant's appeal and referred the matter back to the General Division for reconsideration.

[6] I must decide whether the Appellant had good cause for the entire period of delay in submitting the identification requested by the Commission.

[7] The Commission says that the Appellant received his Permanent Resident Card in July or August 2019, and did not have good cause for delaying until January 20, 2020 to submit it. The Appellant disagrees. He says it took a very long time to receive his Permanent Resident Card; and any delay after that was because he was able to establish a subsequent claim for EI benefits and assumed the Commission had already received a copy.

[8] I find that the Appellant has proven he had good cause throughout the delay in providing the primary identity document required by the Commission. As a result, his claim for EI benefits for the benefit period starting November 19, 2017 should not be denied.

[9] The reasons for my decision are as follow.

PRELIMINARY MATTERS

[10] The Appellant was assisted at the hearing by his aunt, L. N. L. N. advised that the Appellant's ability to read and write in English is extremely limited. He had little education in Portugal before coming to Canada as a 12-year old boy. He left school at age 15 and has worked at manual labour ever since. His family must still assist him in all aspects of his life.

[11] Apart from a brief opening statement by the Appellant, all relevant testimony was provided by L. N. She is the person he turns to whenever he needs help with paperwork and forms and sorting out problems. She has been actively assisting him in resolving this particular matter since May 2018. And she was frank in her statements about the Appellant's limited ability to understand and respond when contacted by the Commission (see also her letter at RGD04-6). By contrast, her own testimony was detailed, sequential and supported by the documentary evidence she filed at RGD04.

[12] I found L. N. to be highly credible, and have accepted her evidence in its entirety.

ISSUE

[13] Did the Appellant have good cause for the entire period of the delay in submitting valid proof of his identity?

ANALYSIS

[14] In order to be paid EI benefits, a claimant must supply information in the form and manner directed by the Commission¹. If a claimant fails to provide the information requested in a timely manner, they must prove that they had good cause for the delay ***and*** that the good cause existed throughout the entire period of the delay².

[15] To show good cause, the Appellant must demonstrate that he acted as a reasonable and prudent person would have in similar circumstances.³

[16] If he fails to prove good cause for his delay in providing the information requested by the Commission, he is not entitled to receive EI benefits⁴.

Issue 1: What is the period of the Appellant's delay?

[17] The Appellant applied for EI benefits on November 27, 2017 (GD3-3 to GD3-13).

[18] The Commission first asked the Appellant for proof of his identity by letter on December 1, 2017 (GD3-14). In this letter, they told the Appellant that the information on his application about his date of birth and mother's maiden name did not match the information on record for his Social Insurance Number. They asked the Appellant to attend at a Service Canada Centre and present one of the primary identity documents described in the letter. Otherwise, his application for EI benefits could be cancelled.

[19] The Appellant did not respond to that letter.

¹ Subsections 48(1) and (2), and 50(5) of the *Employment Insurance Act*.

² Subsection 10(5) of the *Employment Insurance Act*. Proof must be on a balance of probabilities, which means it is more likely than not.

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

⁴ Subsection 50(1) of the *Employment Insurance Act*.

[20] On December 28, 2017, the Commission issued a decision letter (GD3-18). In this letter, they told the Appellant that his application for EI benefits could not be processed because they were unable to authenticate his identity.

[21] On January 11, 2018, the Appellant submitted some of his Portuguese identity documents (GD3-19 and GD3-20), and tried to explain that he had applied for Canadian citizenship but it was taking a long time (GD3-21 and GD3-25). The Commission told the Appellant that they needed evidence of his legal status from Immigration, Refugees and Citizenship Canada (GD3-21).

[22] In a further phone call with the Appellant on January 17, 2018 (see GD3-25), the Commission explained that his Portuguese identity documents were not acceptable and reviewed forms of primary identification that would be acceptable. The Appellant said he did not have any of the acceptable documents, but was awaiting his permanent residency card. The Commission told him to contact Social Services about his dire need of financial assistance because his claim for EI benefits could not start without proper proof of identity.

[23] On January 20, 2020, the Appellant submitted his Permanent Resident Card (GD3-28).

[24] I find that the period of the Appellant's delay is the two-year period **from January 17, 2018** (the date he was verbally advised that his claim from November 2017 could not start without an acceptable form of identification) **to January 20, 2020** (the date he submitted an acceptable form of identification).

Issue 2: Did the Appellant have good cause for the delay throughout that period?

[25] I asked for an explanation as to why it took until January 20, 2020 to provide the Commission with an acceptable form of primary identification.

[26] L. N. testified as follows:

- The Appellant received EI benefits in the past without any issues around his identity. The tax records at RGD04-15 show he received EI benefits in 2015 and 2017 (pre-dating his application in November 2017).

- He also received EI benefits in 2018 and 2019 without any concerns about his identity – even though his November 2017 claim had been denied and his Permanent Resident Card was not issued until April 2019. The tax records at RGD04-15 show he received EI benefits in 2018 (for the application at the end of the landscaping season in fall of 2018) and the T4E issued to the Appellant shows the EI benefits he received in 2019 (RGD04-14).
- He was always able to apply with his SIN.
- The only problem he ever encountered was on his November 2017 application.
- The Appellant tried to fix it himself at first by going in to his local Service Canada office, but he really did not understand why this application was different and was “getting nowhere”.
- She is a “snow bird” and is usually outside of Canada from January to April every year.
- He had no money and had to go on welfare because he couldn’t fix the problem himself and she wasn’t around to help him.
- When she returned to Canada in April 2018, he came to her and told her that his application for EI benefits in November 2017 was denied and he was in dire financial straights.
- It took her some time to investigate and contact multiple agencies to find out exactly what the problem was and what could be done to fix it.
- She eventually learned that the Appellant needed to provide proof of his Landed Immigrant status to support his application for permanent residency.
- But he didn’t have “an original of his landed immigrant record”.
- He came to Canada in 1974 as a child with his mother and siblings, and the original could not be located.
- So she had to apply for a record of the Appellant’s Landed Immigrant status.
- When this arrived, she submitted it with his application for a Permanent Resident Card in September 2018.
- She also submitted a supporting letter listing all of the variations on his name (7 in total) that the Appellant has used while in Canada (RGD04-12).
- The Appellant’s application for a Permanent Resident Card then went “back and forth” for at least six months because various issues with the Appellant’s name – all related to

the fact that the name on his Landed Immigrant documentation was different from the name on his application for permanent residency.

- This problem came about because, back in 1974, the Appellant's name was included in his mother's immigration documents when he came to Canada (using her last name), but changed 3 years later on his application for a SIN (using his father's last name) because his father was his guarantor (see also letter at RGD04-6).
- She had to respond to numerous enquiries about the Appellant's multiple names.
- It took "over 6 months" for her to get Immigration, Refugees and Citizenship Canada to agree that the Appellant was "one and the same person as all his different names".
- They issued his Permanent Resident Card in April 2019.
- He received in July or August 2019.
- In the meantime, he had qualified for and received EI benefits for his seasonal claim in fall/winter of 2018/2019.
- When he received benefits in fall 2018 – without the card, he assumed that he was "up to date with everything" and that receiving the card was "just a formality".
- When his Permanent Resident Card eventually arrived, he assumed Service Canada already had a record of it because he had qualified for EI benefits on a subsequent claim.
- In his mind, "it was all the government" and he thought there would be an automatic "linkage".
- He believed that everything in the EI system was "regularized" and he would eventually receive the benefits he should have been paid on his claim from November 2017.
- He continued to work as much as possible, putting in the very long hours he does every year during the landscaping season.
- But in late 2019, after applying for his 2019/2020 seasonal claim for EI benefits, he told her that he still had not received any EI benefits on his November 2017 claim.
- She immediately became involved again in making calls and investigating why his benefits were still outstanding.
- She eventually found out that he needed to go in to his local Service Canada office and present his Permanent Resident Card in order to be paid on his November 2017 claim.
- But when he did that, he was told that the only thing he could do was appeal to the Tribunal.

- He never gave up on the 2017 claim and believed he would eventually be paid the EI benefits he was entitled to after the issue with his different names was resolved.

[27] I find that the Appellant had good cause throughout his delay because he acted as a reasonable and prudent person in his circumstances would have to preserve his rights to claim EI benefits from November 19, 2017. In coming to this conclusion, I considered the following:

- a) The Appellant is “functionally illiterate” and requires assistance with “any formal communication” (RGD04-5).
- b) These circumstances are highly relevant to the Appellant’s situation and inform all of his actions. They cannot be ignored.
- c) He gave the Commission all of the identification he had in January 2018.
- d) He did not have the cognitive capacity, communication skills or literacy level to take the matter any further.
- e) He was unable to sort out a problem of this nature without the assistance of his Aunt. He went on welfare because he had to wait until she returned to Canada and could look into this for him.
- f) When L. N. returned to Canada in April 2018, she quickly got on to it.
- g) She is a highly competent person, but even she had problems getting to the bottom of the problem. It took her some time to determine exactly what had to be done before the Appellant could even apply for his Permanent Resident Card, and more time to then deal with the lengthy back-and-forth process to support that application.
- h) As a result of her active and on-going efforts starting in April 2018, the Appellant received his Permanent Resident Card in July or August 2019.
- i) He didn’t do anything about submitting the card to Service Canada because he had already been paid EI benefits on a claim he made after the one that had been denied.
- j) A person with the Appellant’s limited cognition, communication and literacy levels would reasonably have assumed that being paid on a subsequent claim meant that the problem on the prior claim was solved, and that the government would eventually get around to paying him on the claim from November 2017.
- k) He was used to these kinds of things taking a very long time.

- l) Given the lengthy, multiple-step process involved in his application for a Permanent Resident Card, it was reasonable that he didn't follow-up with Service Canada right away upon receipt of the card in July or August 2019.
- m) But he didn't delay too long before he started making enquiries in the only way he was functionally capable of doing. In late November 2019, after waiting approximately 3 months for his 2017 benefits, he went back to the one person in his life who helps him with these things – his aunt. This was a reasonable course of action for a person with the Appellant's faculties.
- n) It was also timely because it correlated with his immediate next contact with Service Canada, which was when he was applying for EI benefits at the end of the 2019 season.
- o) Once again, his aunt was able to find out what was required. She directed him to attend at his local Service Canada, which he did (see GD3-27). She also directed him to take his Permanent Resident Card in and follow-up.
- p) He has trouble understanding instructions from Service Canada, but he acted promptly when his aunt told him what to do and submitted his Permanent Resident Card after she told him to do so.
- q) For a person with his particular intellectual challenges, the Appellant nonetheless showed a continuous intention to pursue his November 2017 claim and prudently sought the assistance of his aunt in doing so.

[28] In summary, I find that the Appellant had good cause for the delay from January 2018 to July/August 2019 because he has proven that, during this period, he did everything he was personally capable of and then his aunt took over at her earliest opportunity with an active and continuous effort to obtain the identification requested by the Commission. I have no hesitation in finding that a reasonable and prudent person in the Appellant's circumstances – specifically with his limited cognitive, communication and literacy level, would have acted the same way.

[29] I further find that the Appellant had good cause for the delay from July/August 2019 to January 2020 because he has proven that, during this period, he made the simple yet logical connection between receiving EI benefits on his subsequent claim and resolution of the issues on his prior claim. Although he assumed that he would receive his outstanding benefits in due

course, he only waited a relatively short time to test that assumption. Then in November 2019, he went back to his aunt for her help to find out why he still had not received EI benefits on his November 2017 claim. And her investigations and involvement once again solved the problem. I find that a reasonable and prudent person in the Appellant's particular circumstances – specifically with his limited cognitive, communications and literacy levels, would have acted the same way.

[30] The Appellant has therefore proven good cause throughout the entire period of his delay in providing the identification requested by the Commission.

CONCLUSION

[31] The appeal is allowed.

[32] The Appellant has proven good cause throughout the period of his delay in providing the information required by the Commission to support his application for EI benefits. Therefore, his claim for EI benefits for the benefit period starting November 19, 2017 should not be denied.

Teresa M. Day

Member, General Division - Employment Insurance Section

HEARD ON:	February 5, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. G., Appellant L. N., Representative for the Appellant