



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *GL v Canada Employment Insurance Commission*, 2021 SST 280

Tribunal File Number: GE-21-304

BETWEEN:

G. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: March 23, 2021

DATE OF DECISION: March 31, 2021

Decision

[1] The appeal is allowed. I find that the Appellant has shown that he is entitled to Employment Insurance benefits as of December 22, 2019. The decision of the Canada Employment Insurance Commission (Commission) to disentitle him from benefits for the period from December 22, 2019, to June 20, 2020, because he did not provide it with his Record of Employment on time is not justified.¹

Overview

[2] The Appellant has worked as a school bus driver for the employer X (employer) since 2018. On January 6, 2020, after completing a period of employment from January 6, 2019, to December 20, 2019, he made an initial claim for Employment Insurance benefits.²

[3] On August 11, 2020, the Appellant contacted the Commission about his claim for benefits. The Commission told him that a Record of Employment was missing from his file and that his benefit period had not been established as of December 22, 2019.

[4] On September 9, 2020, the Commission told him that it could not pay him Employment Insurance benefits, from December 23, 2019, to August 7, 2020, because he had not shown good cause for the delay in providing his Record of Employment for his job with the employer.³

[5] On December 7, 2020, in its reconsideration decision, the Commission told the Appellant that the decision it had sent him on September 9, 2020, had been replaced by a new decision, according to which it could pay him benefits from June 21, 2020, because he had shown good cause for the delay in providing his Record of Employment. However, in this new decision, the Commission indicated that it could not pay him benefits for the period from December 22, 2019, to June 20, 2020, because he had not shown good cause for the delay in providing his Record of

¹ See sections 48, 49, and 50 of the *Employment Insurance Act* (Act) and sections 19 and 26 of the *Employment Insurance Regulations* (Regulations).

² See GD3-3 to GD3-10.

³ See GD2-13 and GD3-17.

Employment.⁴

[6] The Appellant says that, after applying for benefits on January 6, 2020, he completed his claimant reports for each reporting period. In July 2020, he realized he had not received benefits for the weeks for which he could have received them since applying for benefits. On August 11, 2020, he contacted the Commission. It was then that he learned that his benefit period had not been established because he had not provided his Record of Employment. It was also then that the Commission told him that he had 45 days, after applying for benefits, to verify whether his Record of Employment had been sent. The Appellant then contacted the employer to ask it to send his Record of Employment to the Commission. The Appellant argues that he is not responsible for the fact that his employer delayed sending his Record of Employment to the Commission. He submits that it was the employer's error. On February 19, 2021, the Appellant disputed the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

Issue

[7] I have to determine whether the Commission's decision to disentitle the Appellant from Employment Insurance benefits for the period from December 22, 2019, to June 20, 2020, because he had not provided his Record of Employment on time is justified.⁵

Analysis

[8] Generally, to receive Employment Insurance benefits, you have to make a claim for each week you did not work and for which you want to receive benefits.⁶ To do this, you have to provide the Commission with bi-weekly reports. The reports are usually done online. You have to meet certain deadlines.⁷

⁴ See GD2-12, GD3-27, and GD3-28.

⁵ See sections 48, 49, and 50 of the Act and sections 19 and 26 of the Regulations.

⁶ See section 49 of the Act.

⁷ See section 26 of the Regulations.

[9] The *Employment Insurance Act* (Act) contains several provisions concerning the claim procedure to establish a claimant's entitlement to benefits.⁸

[10] No benefit period can be established unless the claimant supplies information in the form and manner directed by the Commission, giving the claimant's employment circumstances and the circumstances pertaining to any interruption of earnings, and such other information as the Commission may require.

[11] To be entitled to receive benefits for a week of unemployment, before making a claim for benefits for that week, a claimant must prove that they meet the requirements for receiving benefits and that no circumstances or conditions exist that have the effect of disentitling or disqualifying them from receiving benefits.⁹

[12] A claimant who fails to fulfil or comply with a condition or requirement under section 50 of the Act is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.¹⁰

[13] A claim for benefits for a week of unemployment in a benefit period must be made within the prescribed time.¹¹

[14] A claimant has three weeks to make a claim for benefits.¹²

[15] In this case, I find that the Appellant's failure to provide the Commission with his Record of Employment must not disentitle him from receiving benefits for this reason for the period from December 22, 2019, to June 20, 2019. It was not up to him to send it.

[16] The Appellant's testimony and statements to the Commission indicate the following:

- a) After applying for benefits on January 6, 2020, the Appellant always completed his claimant reports for each reporting period. He completed his reports by telephone. He

⁸ See sections 48, 49, and 50 of the Act.

⁹ See sections 49(1) and 50 of the Act.

¹⁰ See section 50(1) of the Act.

¹¹ See section 50(4) of the Act.

¹² See section 26(1) of the Regulations.

always does them this way. He says he knows nothing about the Internet and considers himself [translation] “useless” in this area.¹³

- b) After completing his reports, the Appellant would receive a message telling him that he had completed his report successfully. He would also receive a message telling him the date by which he had to complete his next report. The Appellant believed that everything was [translation] “correct.” He did not receive a message telling him that his report had been refused or that he had to contact the Commission.¹⁴
- c) The Appellant did not realize that he had not received benefits for the weeks for which he could have received them, after applying for benefits. He did not check his bank account to see whether he had received his benefits. After applying for benefits, the Appellant returned to work and continued to complete his reports. It was not until the beginning of July 2020, at the end of the 2019–2020 school year, when he looked at his bank statements, that he realized that the benefits he could have received had not been paid to him.¹⁵
- d) On August 11, 2020, he contacted the Commission. He tried to contact it before that date but was unsuccessful. The Appellant wanted to know why he had not received benefits for the weeks for which he could have received them. It was during his conversation with a Commission agent on August 11, 2020, that he learned that his Record of Employment was missing and that his benefit period had not been established as of December 22, 2019. It was also at that time that he was told he had 45 days after applying for benefits to verify whether his Record of Employment had been sent to the Commission. The Appellant had not been aware of that deadline.¹⁶
- e) On or around August 11, 2020, after the Commission told him his Record of Employment was missing, he contacted the employer to correct this problem.¹⁷ The

¹³ See GD2-5, GD2-6, GD3-18 to GD3-20, GD3-22, and GD3-23.

¹⁴ See GD3-22 to GD3-24.

¹⁵ See GD2-5, GD2-6, GD3-15, GD3-18 to GD3-20, GD3-22, and GD3-23.

¹⁶ See GD2-5, GD2-6, GD3-15, and GD3-18 to GD3-20.

¹⁷ See GD3-11, GD3-12, GD3-15, GD3-22, and GD3-23.

employer checked and issued the missing Record of Employment.¹⁸ The employer then told him that his Record of Employment had been sent to the Commission.¹⁹

- f) The Appellant submits that, if his Record of Employment was not sent to the Commission on time, it was not his error—it was the employer’s. He notes that, normally, the employer has seven days to provide an employee’s Record of Employment after their layoff or termination of employment. It was an error or an oversight on the employer’s part to have delayed in sending his Record of Employment to the Commission. His Record of Employment is always sent to the Commission electronically, without him being informed that this has been done.²⁰
- g) The Appellant submits that his claim for benefits should have been established as of December 22, 2019.²¹

[17] The Commission’s statements indicate the following:

- a) The Appellant did not provide his Record of Employment from his last employer [translation] “within the prescribed 45-day period.”²² He submitted this document 176 days late, including the 45 days.²³ The Appellant did not meet a requirement under the Act to be able to establish a claim for Employment Insurance benefits.²⁴
- b) When the Appellant completed his reports, he received the following message: [translation] “If you have not already done so, please submit your Record of Employment as soon as possible. If your employer submits Records of Employment

¹⁸ See the Record of Employment issued on August 13, 2020, with respect to the Appellant’s employment period from July 3, 2019, to December 20, 2019—GD3-13 and GD3-14. The following message appears on the front page of the Record: “Service Canada has already received a copy of this electronic Record of Employment. Do not submit a paper copy of this Record of Employment to Service Canada”—GD3-13.

¹⁹ See GD3-22 and GD3-23.

²⁰ See GD2-9, GD2-10, GD2-11, GD3-15, and GD3-18 to GD3-20.

²¹ See GD2-5, GD2-6, and GD3-24.

²² See GD4-1.

²³ In a decision record dated September 9, 2020, the Commission explained that the Appellant had applied for benefits retroactively to December 22, 2019. It noted that it was granting 45 days from the date of the [translation] “initial calculation” before determining whether the Record of Employment was late. It noted that the length of the delay, beyond the 45-day administrative deadline, was 176 days—GD3-25.

²⁴ See GD3-25, GD4-3, and GD4-4.

electronically, no action on your part is required.”²⁵ This message does not clearly indicate that a Record of Employment was missing from the Appellant’s file. However, when the Record is there, this message does not appear.²⁶

- c) Under section 50(1) of the Act and the existing procedures, the Record of Employment should have been submitted to the Commission by February 20, 2020. After that date, the Appellant was required to show good cause for his delay. The Appellant failed to meet the requirement of submitting his Record of Employment within the prescribed time.²⁷
- d) The reasons the Appellant gave to explain his delay in submitting his Record of Employment cannot be considered just cause.²⁸
- e) The Appellant did not make sure that his Record of Employment had been submitted on time. He did not check with his employer to make sure this requirement had been met.²⁹
- f) By not checking whether his benefits had been deposited into his bank account, the Appellant failed to show concern about his entitlement to benefits. From December 2019 to August 2020, he completed his reports without realizing that he was not receiving any money because his last Record of Employment, which was one of the requirements to establish his claim, was missing. The Appellant did not do what a reasonable and prudent person would have done, which is check that his benefits were deposited into his bank account. His delay in noticing that the benefits had not been paid cannot count as a reasonable explanation in this case.³⁰

²⁵ See GD3-26.

²⁶ See GD3-26.

²⁷ See GD4-1.

²⁸ See GD4-3.

²⁹ See GD4-3.

³⁰ See GD3-3 and GD4-4.

- g) The Appellant did not make efforts to make sure he had met the requirements of the Act.³¹
- h) The Commission considered all the reasons the Appellant gave to justify this delay of 176 days.³²
- i) The Appellant did not do what a reasonable person would have done in his situation and failed to meet the requirement of the Act and exercise his rights.³³

[18] In this case, I find that the Appellant is not responsible for the delay in sending his Record of Employment to the Commission.

[19] The Act does not require a claimant to send their Record of Employment to the Commission. It is the employer's responsibility.

[20] I note that the *Employment Insurance Regulations* (Regulations) state that the employer establishes a Record of Employment, on the form supplied by the Commission, when the person employed in insurable employment by the employer has an interruption of earnings.³⁴

[21] The Regulations also state the manner in which the employer must distribute copies of the Record of Employment and the deadline to do so.³⁵

[22] An Umpire decision indicates that the Act and Regulations do not require a claimant to provide their Record of Employment to the Commission and that they cannot be penalized for not having done so. The Umpire notes that Records of Employment are prepared by the employer.³⁶

³¹ See GD4-3.

³² See GD4-4.

³³ See GD4-4.

³⁴ See section 19(2) of the Regulations.

³⁵ See section 19(3) of the Regulations.

³⁶ See CUB 44202. In this decision, the Umpire stated: [translation] "Records of Employment are prepared by employers. The Act and Regulations do not require this information from the claimant. Section 19(2) of the *Employment Insurance Regulations* requires the employer to complete the Record of Employment. Section 19(3) requires the employer to distribute copies of it. As a result, Ms. [...] cannot be penalized with regard to the Record of Employment—the Act and Regulations do not require that she provide it."

[23] In one of its decisions, the Court of Quebec established that a reading of section 19(2) of the Regulations supports the conclusion that, when an employee has an interruption of earnings, it is the employer who is required to send all the information about the insurable employment to the Commission on the appropriate form and within the prescribed time.³⁷

[24] Although I am not bound by the Umpire decision³⁸ or by the Court of Quebec decision,³⁹ I find that these decisions adequately reflect Parliament's intention that it is primarily the employer's responsibility to provide the Commission with the Record of Employment of an employee who has had an interruption of earnings after working for it. So, I take the same approach in this case.

[25] I do not accept the Commission's argument that the Appellant should have made sure that his Record of Employment was submitted on time, or made sure, where appropriate, that the employer had met this requirement.

[26] I note that the Act does not indicate that a claimant has 45 days to make sure that their Record of Employment was sent to the Commission.

[27] I also do not accept the Commission's argument that the Appellant was not concerned about his entitlement to benefits and that he did not do what a reasonable person would have done because he failed to check or delayed checking his bank account to see whether the benefits had been paid.

[28] I find the Appellant's testimony credible. The Appellant does not contradict himself and shows transparency in explaining how he followed up with his claim for benefits after completing his reports.

[29] The fact that he did not check his bank account quickly to see whether benefits had been paid to him does not mean that he is not concerned with his right to receive them. I find that the Appellant took care to regularly complete his reports and that he did this without a problem.

³⁷ See the Court of Quebec decision in *Canada (Attorney General) c Guité*, 2006, QCCQ 21214.

³⁸ See CUB 44202.

³⁹ See the Court of Quebec decision in *Canada (Attorney General) c Guité*, 2006, QCCQ 21214.

[30] I note that the Commission acknowledges that, when the Appellant completed his reports, he did not receive a message telling him that a Record of Employment was missing.⁴⁰ The Commission says that a message told the Appellant to submit his Record of Employment as soon as possible, if he had not done so already, but that nothing was required of him if the employer had sent it electronically.⁴¹

[31] On this point, I note that the Appellant explained that the employer always sent his Record of Employment electronically without telling him it had done so. The evidence on file also indicates that the employer sent the Commission the Appellant's Records of Employment electronically for his periods of employment in 2020.⁴²

[32] I also note that the Commission did not ask the Appellant to provide it with a Record of Employment during the delay period it established.

[33] The evidence on file indicates that it was when the Appellant contacted the Commission, on August 11, 2020, that he was told that his benefit period had not been established as of December 22, 2019, because his Record of Employment was missing.⁴³ Nothing indicates that the Appellant's January 6, 2020, claim for benefits had not been accepted by the Commission before August 11, 2020.

[34] I also note that, as soon as the Appellant was told that his benefit period had not been established, he promptly took the necessary steps to show his entitlement to benefits. He contacted the employer on or around August 11, 2020. On August 13, 2020, the employer issued the missing Record of Employment and sent it to the Commission.⁴⁴

[35] I find that the Appellant showed a constant concern to ensure his right to receive benefits by regularly completing his claimant reports and meeting the deadlines he was given to do so.

⁴⁰ See GD3-26.

⁴¹ See GD3-26.

⁴² See GD2-9, GD2-10, and GD2-11. The following message appears on the front of each Record: "Service Canada has already received a copy of this electronic Record of Employment. Do not submit a paper copy of this Record of Employment to Service Canada."

⁴³ See GD3-12.

⁴⁴ See GD3-13 and GD3-14.

His claimant reports were always completed successfully. The Appellant did what a reasonable person would have done in a similar situation.

[36] The Federal Court of Appeal (Court) tells us that a claimant shows good cause for the delay in applying for benefits when they did what a reasonable and prudent person would have done in the same situation.⁴⁵

[37] In summary, I find that the Appellant's entitlement to benefits should be established as of December 22, 2019.

Conclusion

[38] I find that the Appellant has shown that he is entitled to Employment Insurance benefits as of December 22, 2019.

[39] The disentitlement to benefits that the Commission imposed on the Appellant, for the period from December 22, 2019, to June 20, 2020, because he did not provide his Record of Employment on time is not justified.

[40] The appeal is allowed.

Normand Morin
Member, General Division – Employment Insurance Section

HEARD ON:	March 23, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	G. L., Appellant

⁴⁵ The Court reiterated this principle in *Quadir*, 2018 FCA 21.