



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *HG v Canada Employment Insurance Commission*, 2021 SST 332

Tribunal File Number: GE-21-321

BETWEEN:

H. G.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: March 18, 2021

DATE OF DECISION: March 24, 2021

DECISION

[1] The appeal is dismissed.

[2] H. G. (the “Claimant) did not file her claim reports in time to receive the Employment Insurance Emergency Response Benefit (EI ERB). This means the Claimant cannot be paid EI ERB beyond the \$2,000 she has received.

OVERVIEW

[3] The Claimant stopped working on April 14, 2020, and established a claim for EI ERB on April 19, 2020. Shortly after she received the initial EI ERB payment of \$2,000, she received a temporary access code to allow her to file bi-weekly claim reports to receive benefits. Her access code did not work. From mid-May 2020 to August 2020 she tried, without success, to contact Service Canada once a week to get the access code fixed. The Claimant said a Service Canada Agent told her in September 2020 she needed to file her 2019 income taxes to get benefits. She did so and received her notice of assessment in October 2020.

[4] On December 29 and 30, 2021, the Claimant contacted Service Canada asking to be paid the EI ERB for the weeks she was not able to file her claim reports. The Commission says it will not pay the Claimant any EI ERB because she did not file her claim reports on or before December 2, 2020.

[5] The Claimant disagrees because she says the Commission caused the delay. She says she was provided with an access code that did not work, she could not get into the Commission’s portal to file her reports, and she was given incorrect information that she had to file her income taxes before she could get a new access code or benefits. The Claimant appeals to the Social Security Tribunal.

ISSUE

[6] I must decide if the Claimant’s claim reports can be considered as if the reports were made on an earlier date.

ANALYSIS

[7] In March 2020, the government changed the *Employment Insurance Act* to allow the Minister to make temporary orders to reduce the economic impact of the COVID-19 pandemic.¹ These temporary orders are in Part VII of the *Employment Insurance Act*.

[8] The EI ERB, a temporary benefit that became effective March 15, 2020, was created by a temporary order. Eligible claimants may make claims for the EI ERB for any two-week period that falls between March 15, 2020, and October 3, 2020.² The law says that a claim for EI ERB benefits must not be made after December 2, 2020.³

[9] The Claimant testified that she applied for EI benefits on-line. She received the first \$2,000 EI ERB payment on April 29, 2020. She then received a temporary access code by regular postal mail in mid-May 2020. She tried the access code but it did not work. The Claimant testified that she tried to contact Service Canada about the code. She said that she would telephone Service Canada once a week during the summer months but was not be able to get through or she could not stay on hold for hours to wait to get through.

[10] The Claimant testified that in August 2020 she spoke over the phone to a Service Canada Agent. She says the Agent told her she had to file an income tax return for the 2019 tax year to receive her benefits and a new access code. The Claimant filed her tax return in September and received a notice of assessment and refund in October 2020. The Claimant said that she did not try to contact Service Canada after she was told she needed to file her income taxes. She said that she expected to get her access code when she received her income tax refund but no access code was sent to her. She did not try to contact Service Canada after she received her refund and notice of assessment from the Canada Revenue Agency.

[11] The Claimant testified that she had to make a choice about how she spent her time: conducting a job search or trying to contact Service Canada. She chose to focus on her job

¹ The *COVID-19 Emergency Response Act* added section 153.3 to the *Employment Insurance Act*, which allows the Minister of Employment and Social Development to make temporary orders amending the *Employment Insurance Act*. Subsection 153(8) of the *Employment Insurance Act* says that these interim orders prevail to the extent of any conflict with the *Employment Insurance Act* or any regulation made under it.

² *Employment Insurance Act*, subsection 153.8(1). This is how I refer to the legislation that applies to this appeal.

³ *Employment Insurance Act*, subsection 153.8(2)

search and was actively looking for work. The Claimant was going through a hiring process in September 2020 and started a new job at the end of October 2020. When she came home for the holidays in December 2020, family members told her that she could get EI benefits. That is when she contacted Service Canada on December 29, 2020. The first call was cut off, but she was able to again make contact on December 30, 2020.

[12] The Commission says that following the initial \$2,000.00 payment, claimants requesting the EI ERB must continue to complete bi-weekly claimant's reports to demonstrate their ongoing entitlement to the benefit.

[13] The Commission says it cannot interpret the legislation in any other way than its plain meaning. It says that the antedate provisions in Part I of the *Employment Insurance Act* cannot be applied under any other parts of the *Employment Insurance Act* unless the provision is specifically incorporated into that part. The Commission says that Part VII.4 of the *Employment Insurance Act*, which contains the EI ERB provisions, has no reference to the antedate provisions for EI ERB; Part VII.4 only says that claims must be made on or before December 2, 2020. The Commission says that the Claimant contacted the Commission on December 29, 2020, to request payment of the EI ERB, which is past the limitation date of December 2, 2020. The Commission says that incomplete or misleading information from the Commission is not a ground for entitlement.

[14] The Claimant argues that the application for EI benefits imposes certain responsibilities on Service Canada. It was required to give her accurate information about her claim. She says in her case she was not given accurate information. Beginning with an access code that did not work and then the incorrect information about having to file an income tax return to get a new access code to get benefits meant that she was not able to receive the EI ERB. She says that she did try to contact Service Canada multiple times and was unable to do so.

[15] The Claimant explained that she has suffered financial hardship due to errors on Service Canada's part. She was unable to act due to those errors. The Commission's errors led to a set of events that set her up for not being able to apply for the EI ERB before December 2, 2020. The Claimant asked whether subsection 10(5) of the *Employment Insurance Act* could apply to her circumstances.

[16] I find that the Claimants' claim reports cannot be considered as being made on or before December 2, 2020. The reasons for my decision follow.

[17] I will start with subsection 10(5) of the *Employment Insurance Act*. That subsection allows for late claim reports to be considered as being made on an earlier day provided that a claimant can show good cause for the delay between when the report should be made and when it was made.⁴ The temporary order that established the EI ERB says that only certain sections of the *Employment Insurance Act* apply to the EI ERB.⁵ Subsection 10(5) is not among those listed. In addition, the temporary order also says no other provision of the *Employment Insurance Act* or *Employment Insurance Regulations* applies in respect of a claim for the EI ERB except those listed as directly applying to the EI ERB.⁶ As a result, a claimant need not prove good cause for late filing of claim reports requesting payment of the EI ERB.

[18] The Claimant contacted the Commission on December 29, 2020, asking that she receive her EI ERB benefits. As noted above, following the initial \$2,000.00 payment, to receive benefits she had to file bi-weekly claim reports. She has provided an explanation of the events that led to her delay in filing those reports. But, it is not within my authority to find that her explanation does or does not meet the test of good cause for the delay in filing because the law only says that the claim reports for EI ERB must be made on or before December 2, 2020. The Claimant did not make any claim reports for the bi-weekly periods between her initial application made on April 22, 2020 and September 27, 2020, on or before December 2, 2020. As a result, I find that the Claimant's reports cannot be considered to be made on or before December 2, 2020.

[19] I acknowledge the Claimant's argument that she was prevented from making her claim reports due to the faulty temporary access code and the later inaccurate information she was given concerning the need to file an income tax return to get a new access code. While this may

⁴ For information purposes only: the test to establish "good cause" for delay is whether the claimant acted as a reasonable and prudent person in her circumstances as hers would have acted (*Canada (Attorney General) v. Burke*, 2021 FCA 139). The Claimant must also show she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law; if she did not do so she must show exceptional circumstances existed to explain why she did not act reasonably quickly to understand what she needed to do to receive EI benefits. (*Canada (Attorney General) v. Somwaru*, 2010 FCA 336; *Canada (Attorney General) v. Kaler*, 2011 FCA 266.

⁵ *Employment Insurance Act*, section 153.6(1)

⁶ *Employment Insurance Act*, section 153.6(3)

be true, the Federal Court of Appeal has found that it is obvious that Commission agents have “no power to amend the [law],” so any interpretation they make of the law does not, by itself, “have the force of law.”⁷ The Court also stated that any commitment the Commission’s representatives might make, “whether in good or bad faith, to act in a way other than” written in the law, is “absolutely void.” This means that even if the Claimant did receive incorrect information from Commission agents, what is important is what is written in the *Employment Insurance Act*, and whether the Claimant complied with those provisions.

[20] I am sympathetic to the financial hardship and difficulties the Claimant has faced in the past year. As tempting as it may be in such cases (and this may well be one), I am not permitted to re-write legislation or to interpret it in a manner that is contrary to its plain meaning.⁸ I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

CONCLUSION

[21] The appeal is dismissed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	March 18, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	H. G., Appellant

⁷ *Granger v. Employment and Immigration Commission*, A-684-85

⁸ *Canada (Attorney General) v. Kneé*, 2011 FCA 301, says “rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme ... adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.”