



Citation: *KH v Canada Employment Insurance Commission*, 2022 SST 1011

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: K. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (448319) dated January 20, 2022 (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference

Hearing date: May 12, 2022

Hearing participant: None

Decision date: May 26, 2022

File number: GE-22-719

Decision

[1] K. H. is the Claimant. The Canada Employment Insurance Commission (Commission) is refusing to accept her biweekly claimant reports. This is because the Commission says the Claimant doesn't have good cause for her delay in completing these reports. The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. I find that the Claimant hasn't proven that she had good cause for her delay. This means the Commission doesn't have to accept her late reports.

Overview

[3] The Claimant started an Employment Insurance (EI) benefit period in November 2020. She completed biweekly claimant reports and collected several weeks of EI benefits. Then, she stopped doing her reports in May 2021. Eventually, she contacted the Commission at the end of September 2021. She asked the Commission to accept her late reports and treat them as if she made the reports on May 16, 2021.

[4] The Commission is refusing to accept the Claimant's late reports. The Commission says that she hasn't proven that she had good cause for her delay in completing her reports. The Commission says she should have taken more steps to make sure her EI benefits continued.

[5] The Claimant disagrees. She says that the Commission didn't consider her situation. She says that she didn't have internet access and she was too anxious to leave her house because of the COVID pandemic.

Matter I have to consider first

The Claimant wasn't at the hearing. I will not adjourn the hearing.

[6] I proceeded with the hearing, even though the Claimant wasn't at the hearing. I will not grant a second adjournment and reschedule a hearing.

[7] I originally scheduled a hearing for April 19, 2022. The Claimant asked the Tribunal to adjourn the hearing, and gave us an alternate date. I used the Claimant's availability and scheduled a hearing for May 12, 2022.

[8] On May 10, 2022, Tribunal staff called the Claimant to remind her of the upcoming hearing. The Claimant told Tribunal staff that she couldn't attend the hearing. Tribunal staff explained that she had to ask for an adjournment in writing.

[9] The Claimant sent an adjournment request in writing more than a week later, on May 25, 2022. She didn't give reasons for her adjournment request.

[10] When you ask for a second adjournment request, you have to show that there are exceptional circumstances that require another adjournment request.¹

[11] The Claimant didn't even give reasons for her adjournment request. Furthermore, I scheduled the hearing on a date she asked for. I don't think she has shown that there are exceptional circumstances that justify another adjournment.

[12] So, I am refusing her adjournment request. I choose to proceed with the hearing, even though the Claimant didn't attend the hearing.

Issue

[13] Did the Claimant have good cause for the delay in claiming EI benefits?

Analysis

[14] You have to complete biweekly claimant reports to get EI benefits. You are supposed to do these reports on time.² Usually, you have three weeks to complete your reports.³ If you try to do the reports after three weeks, the reports are late.

¹ Subsection 11(2) of the *Social Security Tribunal Regulations*.

² Subsection 50(4) of the *Employment Insurance Act*.

³ Section 26 of the *Employment Insurance Regulations*.

[15] You can ask the Commission to accept late reports. However, you have to show that you had good cause for being late.⁴

[16] Having good cause means that you have to show that you acted as a reasonable and prudent person would have acted in similar circumstances.⁵ You have to show that you reasonably quickly to understand what you needed to do to receive EI benefits.⁶

[17] If you didn't act quickly to understand your rights and obligations under the law, then you have to show that there were exceptional circumstances that excuse your delay.⁷

[18] You have to show good cause for the entire period of your delay.⁸ In this case, the Claimant wants the Commission to treat her late claims as if she made them on May 16, 2021. So, her delay is from May 16, 2021 to September 18, 2021.

[19] The Commission says that the Claimant doesn't have good cause for her delay. The Commission says she hasn't proven that she acted as a reasonable person in the same situation would have done. The Commission says she should have tried to contact the Commission sooner, either by phone or by going in-person to a Service Canada centre.

[20] The Claimant says the Commission isn't looking at her situation. The Claimant says that she delayed doing her reports because lost her internet access. She didn't have a phone card and she was too anxious to leave her house because of the COVID pandemic.

⁴ Subsection 10(5) of the *Employment Insurance Act*.

⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

⁷ At paragraph 11 in its decision *Canada (Attorney General) v. Somwaru*, 2010 FCA 336, the Federal Court of Appeal says that, "barring exceptional circumstances, a prospective claimant ... is expected to take 'reasonably prompt steps'" to understand their obligations under the *Employment Insurance Act*.

⁸ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[21] I understand that the Claimant was anxious about the pandemic. But I don't think she has proven that she had good cause for her delay in completing her biweekly claimant reports.

[22] The Claimant knew that she had to keep doing her reports to get EI benefits. She had been regularly doing her reports until May 2021. She would have known that she wasn't getting EI benefits anymore when she stopped completing her reports.

[23] Even if she didn't have internet access anymore after May 2021, she could have continued completing her reports by phone. She was already asking her landlord to bring groceries for her, so she could have also asked them to help her by buying a phone card.

[24] She also said she left her home for medical appointments and bank appointments. The Commission says this means that she also could have come in-person to a Service Canada centre. I agree with the Commission. I think that making sure her EI benefits continued without interruption was an important task that the Claimant could have tried addressing in-person, if it was too hard for her to phone.

[25] I understand that the Claimant was anxious about the COVID pandemic. But I think a reasonable person in the same situation would have taken steps to make sure they kept getting income by doing their biweekly claimant reports. So, I don't think the Claimant has proven that she acted as a reasonable person in the same situation would have done. Also, I don't think the Claimant has proven that her situation was exceptional, because she could have called or gone to a Service Canada centre in-person.

[26] So, I find that the Claimant hasn't proven that she had good cause for her delay in completing her biweekly claimant reports.

Conclusion

[27] I am dismissing the Claimant's appeal. She hasn't proven that she had good cause for her delay. This means that the Commission doesn't have to accept the late biweekly claimant reports.

Amanda Pezzutto
Member, General Division – Employment Insurance Section