



Citation: *KH v Canada Employment Insurance Commission*, 2023 SST 238

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

Decision

Appellant:	K. H.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (0) dated January 20, 2022 (issued by Service Canada)
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Tribunal member:	John Noonan
Type of hearing:	Teleconference
Hearing date:	February 20, 2023
Hearing participants:	Appellant
Decision date:	March 2, 2023
File number:	GE-22-3410

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, K. H., was upon reconsideration by the Commission, notified that because she did not file her reports for employment insurance benefits within the time prescribed under subsection 26 (2) of the Regulations and did not show good cause throughout the entire period of the delay in filing her reports the Commission denied benefits from May 16, 2021 through to September 18, 2021 as well as her antedate request made October 6, 2021 pursuant to subsection 10 (5) of the Act. The Appellant asserts that she was unable to file her reports and that she only left her home once, as she was immobile due to anxiety, stating Covid took its toll on each of us in various ways. The Tribunal must decide if the Appellant should be denied an antedate as per subsection 10(5) of the Employment Insurance Act (the Act) and section 26(2) of the Employment Insurance Regulations (the Regulations).

Matter I have to consider first:

[3] Appeal returned from Appeal Division due to there not being a second adjournment. I have purposely not reviewed the original decision so as not to be influenced in any way by the content and outcome.

Issues

[4] Issue # 1: Did the Appellant qualify on the earlier day?

Issue #2: If so, was there good cause for the delay throughout the entire period?

Analysis

[5] The relevant legislative provisions are reproduced at GD4.

[6] Subsection 10(5) of the Act allows a claim for benefits to be considered to have been made on an earlier day if the Appellant shows she qualified for benefits on the

earlier day and that she had good cause for the delay, throughout the entire period of delay. (this covers the issue of delayed bi-weekly reports also)

[7] The correct legal test for good cause is whether the Appellant acted as a reasonable person in her situation would have done to satisfy herself as to her rights and obligations under the Act. **Canada (AG) v. Kaler, 2011 FCA 266**

[8] The onus / burden is on the Appellant to show good cause for the delay throughout the entire period. **CUB 18315** The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” the events occurred as described.

[9] Good cause is not defined in the legislation. It can be said to exist where the claimant acted as a reasonable person in the same situation would have acted to ensure compliance with her rights and obligations under the Act. **Paquette v. Canada (AG), 2006 FCA 309**

Issue 1: Did the Appellant qualify on the earlier day?

[10] Yes.

[11] Evidence on the file shows that the Appellant filed a claim which had become effective on November 29, 2020. The Appellant then was issued an access code by the Commission so as she could submit her bi-weekly reports.

[12] She then received benefits from through to May 16, 2021 at which time she stopped claiming benefits through the submission of bi-weekly reports.

[13] I find that because there was an open claim that had not been terminated by either the Appellant or the Commission, the Appellant qualified for benefits on the earlier day, May 16, 2021.

Issue 2: If so, was there good cause for the delay throughout the entire period?

[14] No.

[15] For the period of May 16, 2021 through to September 18, 2021 she failed to submit her bi-weekly reports. She explained she finds herself in a difficult place with no source of income, due to her claim ending. She states during the period from May 16, 2021 to September 18, 2021, she was unable to file her reports and that she only left her home once, as she was immobile due to anxiety, stating Covid took its toll on each of us in various ways. She explains she previously completed her reports via the internet but her landlord cancelled their internet and that her monthly cell phone provider expired. She states she was unable to venture out and found herself between a rock and hard place, however she eventually pulled through this difficult time, and emerged from her home, feeling stronger and more positive and that she is busily dropping off resumes and applying on line, hoping to obtain employment. She states she does not have a doctor's note and she worked through this on her own (GD3-43 to GD3-46). She contacted Service Canada on October 6, 2021 outside the administrative five week period allowed and requested benefits for the period by asking for an antedate.

[16] When contacted by a representative of the Commission on January 19, 2022, the Appellant indicated she did not complete her reports from May 16, 2021 to September 18, 2021, because she had anxiety to go out due to Covid. She states her landlords are very nice caring people, who help her get groceries, but cancelled the internet over the summer and the phone card that she uses expired. She states she couldn't go out or leave her home and only went out once to the bank and dentist. She states in September she started to go out and apply for work and then once she was on her feet again, she got a phone card and called to get her unemployment reinstated. She states she was surprised that her claim ended and is requesting benefits for the four months (GD3-47).

[17] The Appellant filed the antedate request in an effort to be paid for the weeks lost due to no reports having been made.

[18] The Appellant stated that she was housebound due to the pandemic with no access to internet or telephone services.

[19] The Commission asserts that the Appellant, based on her submission, did leave the residence to visit her bank and her dentist at which time she could have purchased a phone card and / or visited a Service Canada office to obtain assistance. Having been on claim for six months, she was well aware of the requirement to complete the bi-weekly reports.

[20] Another practical option open to her was to request the landlord to pick up a phone card for her when they were purchasing her groceries.

[21] The Appellant, at her hearing, testified that while she was not a personal friend of the landlord was not comfortable asking them to do errands such as picking up a phone card.

[22] She testified she chose not to attend a walk-in clinic to obtain medical advice regarding her self diagnosed anxiety,

[23] She did testify that she regularly ordered in Chinese food. Such ordering had to be done either on-line or by phone.

[24] The Appellant had submitted and testified she had access to neither which brings into question the credibility of her submissions. It is my opinion, based on the direct testimony of the Appellant, that she did have access to either telephone or internet service during the period in question.

[25] Therefore I find there was nothing hindering the Appellant from calling the Commission for assistance during the delay to clarify her circumstance and submitting her bi-weekly reports.

[26] I accept that the Appellant was anxious due to the pandemic but that anxiety did not cause her to not obtain groceries, dental and banking services. A reasonable individual dependant on Employment Insurance benefits would find a way to submit the bi-weekly reports required to collect those benefits.

[27] I find that the Appellant, in this case, did not act “as a reasonable person in the same situation would have acted to ensure compliance with her rights and obligations under the Act”.

[28] The Commission relies on the bi-weekly reports to ascertain if benefits are payable.

[29] The onus is totally on the Appellant to submit these reports to claim benefits. There is no provision in the legislation that would allow for the payment of benefits when no claim for such was made in the proper manner as described in the Act and Regulations.

[30] In this case, I find that the Appellant has not shown any evidence of good cause for the delay in submitting her bi-weekly reports throughout the entire period which is also the basis for the antedate request.

Conclusion

[31] Having given careful consideration to all the circumstances, I find that the Appellant has failed to show good cause throughout the entire period of delay as the onus is on her to do so therefore the appeal is dismissed.

John Noonan

Member, General Division – Employment Insurance Section