



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. D. v. Canada Employment Insurance Commission*, 2018 SST 356

Tribunal File Number: GE-17-2827

BETWEEN:

M. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: March 8, 2018

DATE OF DECISION: April 27, 2018

DECISION

[1] The appeal is dismissed. The Appellant's claim cannot be antedated because she has failed to prove she had good cause for the delay throughout the entire period.

OVERVIEW

[2] The Appellant received 50 weeks of maternity and parental benefits and her claim ended the week of September 25, 2016. On April 10, 2017, the Appellant requested an antedate so her parental claim could be backdated to September 27, 2016, and changed to sickness benefits. The Canada Employment Insurance Commission (Commission) denied her antedate request as it was determined she did not show she had good cause for the delay throughout the entire period.

ISSUES

[3] Did the Appellant make a claim for benefit within the time prescribed?

[4] Did the Appellant have good cause for delay throughout the entire period?

ANALYSIS

[5] The relevant legislative provisions are reproduced in the Annex to this decision.

Issue 1: Did the Appellant make a claim for benefit within the time prescribed?

[6] No, the Appellant did not make a claim for sickness benefits in the time prescribed because the renewal request needed to be made the week of September 25, 2016, before her parental benefits were exhausted.

[7] According to subsection 26(2) of the *Employment Insurance Regulations* (Regulations), where a claimant has not made a claim for benefit for four or more consecutive weeks, the first claim for benefits after that period for a week of unemployment shall be made within one week after the week for which the benefits are claimed.

[8] However, under subsection 10(5) of the *Employment Insurance Act* (Act), late claims, i.e. claims made after the period prescribed by subsection 26(2) of the Regulations, can be antedated

if the claimant shows that there was good cause for the delay in making the claims (*Canada (A.G.) v. Kokavec* 2008 FCA 30).

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

[9] No, I find the Appellant did show she had good cause for the delay throughout the entire period and she did not do what a reasonable person would have done in the same circumstances.

[10] To show good cause for the delay in requesting her claim be converted from parental to sickness benefits the claimant must demonstrate she did what a reasonable and prudent person in her situation would have done to satisfy herself as to her rights and obligations (*Albrecht A-172-85*).

[11] The Appellant stated her sister dropped off a medical note at a Service Canada office in October 2016, which indicated she was not able to return to work. She stated her sister left the document on the counter and never spoke to anyone. She stated she then waited for money to be deposited in her account but she never checked her bank account until November and tried to call Service Canada but did not get an answer. A family friend told her the process would take about 6 to 8 weeks, so she waited. She stated that around Christmas time she checked her account again and there still had been no money deposited.

[12] The Appellant stated that in January her sister dropped off another medical note on January 17, 2017, that was dated January 6, 2017, indicated she was unable to work from December 22 to February 2, 2017. She stated she then dropped off another note on February 3, 2017, stating she was unable to work from September 27, 2016, to March 27, 2017.

[13] The Appellant made a request for an antedate on April 10, 2017, to have her sickness benefits considered on the earlier date of September 27, 2016, because she had dropped off a letter in October and thought that someone from Service Canada would contact her about her request.

[14] I find that the Appellant has not demonstrated she had good cause for the entire delay and her testimony at the hearing differs from that of her initial statements in her attempts to do what a reasonable person in her situation would have done.

[15] The Appellant initially stated that she had dropped off a medical note at the Service Canada Center in October 2016; however now states it was her sister that did and she just left it on the counter without speaking to anyone. She also testified that it was her sister that dropped off a second note and she herself dropped off the third and fourth notes.

[16] I find despite who dropped off the notes, the Appellant's lack of actions that followed does not demonstrate good cause. The Appellant conceded that she never made contact with Service Canada until January 2017.

[17] Claimants are expected to take reasonably prompt steps to determine their entitlement to receive benefits and to make sure of their rights and obligations under the Act. (*Canada (A.G.) v. Carry*, 2005 FCA 367).

[18] I find the Appellant's reasons that she didn't know she had to do anything else; she thought Service Canada would contact her; she just waited to see if money would be deposited in her account; and her belief that a family friend advised her it would take 6 to 8 weeks does not demonstrates good cause and these reasons would have prevented her from inquiring about her rights and obligation.

[19] I find, from the Appellant's concession that there was nothing that prevented her from contacting Service Canada herself to confirm her information was received, or waiting until January to submit another medical. The Appellant knew in November and December she had not received any money but still failed to make any attempt to contact Service Canada. She conceded that she was not incapacitated in any way during the entire time of the delay.

[20] I find, the Appellant's reason that she didn't know or ignorance of the law cannot be justified and applied in this case because she is not able to show that she did what a reasonable person in her situation would have done to satisfy herself as to her rights and responsibilities under the Act (*Canada (A.G.) v. Albrecht* FC 170).

[21] The Appellant requested the opportunity to provide proof that there was a medical note issued in October (the one that went missing); however the date of incapacity is not before me but rather has the Appellant shown good cause for the delay from September 27, 2017, to April 10, 2017.

[22] I sympathize with the Appellant's situation but I do not have the authority to alter the requirements of the Act and must adhere to the legislation regardless of the personal circumstances of the Appellant (*Canada (AG) v. Levesque*, 2001 FCA 304).

CONCLUSION

[23] Considering all relevant circumstances to the issue of an antedate, I find the Appellant did not act like a reasonable and prudent person in her situation would have done to verify her rights and obligations under the Act, nor did any exceptional circumstances exist to justify the delay from September 27, 2017, to April 10, 2017, as per the Act.

[24] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	March 8, 2018
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	M. D.

ANNEX

THE LAW

Employment Insurance Act

10 (5) A claim for benefits, other than an initial claim for benefits, made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.

Employment Insurance Regulations

26 (1) Subject to subsection (2), a claim for benefits for a week of unemployment in a benefit period shall be made by a claimant within three weeks after the week for which benefits are claimed.

(2) Where a claimant has not made a claim for benefits for four or more consecutive weeks, the first claim for benefits after that period for a week of unemployment shall be made within one week after the week for which benefits are claimed.