

Parental Benefits Claim Delayed



THE CASE

What Happened: A migrant worker from Mexico worked seasonally on an Ontario farm. Employment insurance deductions were collected from his pay. Nine months after the birth of his child, he submitted a claim for parental benefits, saying his claim was delayed because he didn't know he was entitled to those benefits. His claim was denied but a Board of Referees reversed, finding good cause for the delay because the worker couldn't read or write English, his employer didn't issue ROEs unless requested, and his work schedule precluded his inquiry about benefit entitlements. An umpire disagreed and reinstated the denial stating the worker never tried to inform himself of his rights and responsibilities.

What the Court Decided: A federal court of appeal reversed the umpire, finding the facts reasonably demonstrated good cause for delay.

How the Court Justified the Decision: The court said case law permitted, in exceptional circumstances, finding good cause for delay despite a worker's inaction and the facts here demonstrated such exceptional circumstances. The court noted that the umpire failed to "consider the entirety" of the worker's situation and the barriers he faced to claiming employment insurance benefits. Noting that failure to take any action to discover rights and responsibilities regarding employment insurance benefits normally doesn't provide good cause for a delayed application, the court emphasized that the test should be what a reasonable person in the same circumstances would have done. Thus, the facts with regard to the worker in this case were critical. The type of benefits was also important. That's because the worker here sought parental benefits rather than regular employment insurance benefits. Which meant he didn't have to prove he was available for work during the benefit period—as he'd be required to prove for other employment insurance benefits. Thus, the facts concerning the barriers the worker faced and the type of benefits sought amply demonstrated exceptional circumstances excusing his delay [*De Jesus v. Canada (Attorney General)*, [2013] FCA 264 (CanLII), Nov. 19, 2013].

ANALYSIS

The court emphasized that while normally EI benefits should be sought in a timely manner, there are cases where even a worker's failure to do *anything* will be excused. The court recognized the realities of this worker's situation and the obstacles he faced as being extraordinary and allowed his delayed benefit claim.

Bottom Line: A bright line test isn't always a bright line test when extraordinary circumstances are involved and the law allows for consideration of those circumstances. That means workers who haven't sought EI benefits, at least parental benefits, may not be precluded from claiming them later if they haven't been educated about their rights. Employers may be wise to ensure information about benefits are provided in multiple languages and make sure the employer isn't making the worker jump through hoops to find out about their benefits or how to collect them.